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THE ANGLO-INDIAN CODES

EDITED BY

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'Our principle is simply this — uniformity when you can have it; diversity when you must have it; but in all cases certainty.'—MACAULAY.

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Agra..... = Reports of the High Court of Judicature for the North-Western Provinces, by Munshí Hanuman Pershad and Lálá Lálita Pershad, vols. i–iv, Agra, 1867, 1868.

Agra F. B. ... = Reports, etc. containing Full Bench Rulings, Agra, 1867.

All. ..... = Indian Law Reports, Allahabad Series, vols. i–x, Allahabad, 1876–1888.

Ben. ..... = Bengal Law Reports, vols. i–xv, Calcutta, 1868–1875.

Ben. F. B..... = Full Bench Rulings of the High Court at Fort William, Calcutta, 1874.

Bom. ..... = Indian Law Reports, Bombay Series, vols. i–xii, Bombay, 1876–1888.

Bom. H. C. ... = Reports of Cases decided in the High Court of Bombay, vols. i–xii, Bombay, 1867–1875.

Boulin. ..... = Reports of Cases in the Supreme Court at Fort William (1856–1859), by C. Boulnois.

Bourke ..... = Reports of Cases . . . in the High Court of Judicature at Fort William, by Walter M. Bourke, Calcutta, 1867.

Cal. ..... = Indian Law Reports, Calcutta Series, vols. i–xv, Calcutta, 1876–1888.

C. L. R..... = Calcutta Law Reports.

Fulton ..... = Reports of Cases in the Supreme Court of Judicature at Fort William, Calcutta, by J. W. Fulton, 1845.

Hyde ..... = Reports of Cases, etc., by E. Hyde. Two vols., Calcutta, 1864.

Ind. Jur., N. S. = The Indian Jurist, New Series (Jan. 1866—Sept. 1867).

Mad. ..... = Indian Law Reports, Madras Series, vols. i–xi, Madras, 1876–1888.

Mad. H. C. ... = Reports of Cases decided in the High Court of Madras, vols. i–viii, 1864–1876.

Marshall ..... = Reports of Cases on Appeal, Calcutta, by W. Marshall, 1864.

Morl. Dig. ... = An Analytical Digest of all the reported Cases decided in the Supreme Courts of Judicature in India, etc., by W. H. Morley, London, 1850, vols. i–iii.

Morton ..... = Decisions of the Supreme Court of Judicature at Fort William, by T. C. Morton, Calcutta, 1841.

N. W. P. ..... = Reports of Cases heard and determined in the High Court, N. W. Provinces, vols. i–vii, Allahabad, 1873–1875.

Perry..... = Cases illustrative of Oriental Life and the application of English Law to India, by Sir Erskine Perry, London, 1853.

Suth. ..... = The Weekly Reporter, Appellate High Court, vols. i–xxvi, by D. Sutherland, Calcutta, 1864–1876.

Suth. 1864. ... = Sutherland's Reports of Decisions of the Appellate High Court from January to July, 1864, Calcutta, 1867.

Suth. Sp. N. ... = Special Number of the Weekly Reporter . . . containing Full Bench Rulings from July 1862 to July 1864, Calcutta.

Tayl. & Bell.... = Reports of Cases heard and determined in the Supreme Court of Judicature at Fort William in Bengal, vols. i and ii, Calcutta, 1851–1853.

With the exception of Maddock's reports of cases temp. Plumer V.C. and Leach V.C., the English Reports have been cited in the usual manner.

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INTRODUCTION TO THE CODE OF CRIMINAL PROCEDURE.

THE importance of supplementing the Penal Code by wise rules for preventing offences and bringing offenders to justice appears from the following considerations[1]:—

First, expense, delay or uncertainty in applying the best laws for the prevention and punishment of offences would render those laws useless or oppressive:

Secondly, the law relating to criminal procedure is more constantly used, and affects a greater number of persons, than any other law. The offender and the individual injured are, as a rule, the only persons immediately affected by the commission and punishment of a crime. But in the measures prescribed for preventing crimes and prosecuting criminals any one, however unconnected with a given offence, may find himself involved. As a judge, a magistrate, a soldier, a volunteer, a policeman, or even a private citizen, every one is liable to become an active party in preventing the commission of crimes, in stopping the progress of crimes continuous in their nature, or in arresting offenders. In India, moreover, private persons are liable to serve in trying cases as jurors or assessors.

History of the codification of criminal procedure.

For these reasons the Government of India has laboured long and zealously to produce a code of Criminal Procedure which should be easily understood, cheap, expeditious and just. So long ago as the 20th March, 1847, the President in Council instructed the Indian Law Commissioners to prepare a scheme of pleading and procedure with forms of indictment adapted to the provisions of the Penal Code; and such a scheme, together with several forms, was prepared by Messrs. Cameron and Eliott, and submitted with a report dated 1 Feb. 1848[2]. Their draft was examined and considered by a new set of Commissioners appointed in 1854 under 16 & 17 Vic. c. 95, sec. 28, and comprising Sir John

[1] See Livingston's introductory report to the Code of Procedure prepared for the State of Louisiana, *Works*, i. 331.

[2] There was a previous report dated 4 Nov. 1843 regarding the qualifications, summoning, and challenging assessors and jurors. This I have not seen.

Romilly M.R., Sir John Jervis C.J., Sir Edward Ryan, and Messrs. Cameron, Ellis, Lowe (now Lord Sherborne), and Millett. These Commissioners produced a draft Code which was presented to Parliament in 1856, and was in the following year introduced into the Legislative Council by Mr. (now Sir Barnes) Peacock. It ultimately was passed by the Legislative Council as Act XXV of 1861. This Code came into force on 1 Jan. 1862: it applied in the first instance only to the territories subject to what were called the general regulations, but was gradually extended to the rest of British India except the Presidency-towns. It was amended by Acts XXXIII of 1861, XV of 1862, VIII of 1866, and (very largely) by Act VIII of 1869. Three years after, the principal Code and its amending Acts were repealed and replaced by Act X of 1872, drawn partly by Mr. (now Sir Fitzjames) Stephen (who tells us[1] that he framed the sections corresponding with sections 221–240 of the present Code); partly by Mr. H. S. Cunningham; but chiefly by the late Captain Newbery, personal Assistant to the Inspector General of the Panjáb police. This Code, like its predecessors, was not applicable to the Courts established by Royal Charter in Calcutta, Madras and Bombay.

The High Courts.

For these Courts, as well as for the High Court at Allahabad and the Chief Court at Lahore, provision was made by Act X of 1875 (*to regulate the procedure of the High Courts in the exercise of their original criminal jurisdiction*), which reduced the number of jurors to nine and the number of peremptory challenges to eight, dispensed with the necessity of an unanimous verdict, codified the law relating to *habeas corpus*, provided a simple substitute for the writ of *certiorari*, and repealed and re-enacted in an improved form the seven Acts[2] by which the Legislature had from time to time amended the criminal procedure of the Supreme Courts, or their successors the High Courts. This Act[3] was drawn by the writer and carried by Mr. (now Lord) Hobhouse.

[1] History of the Criminal Law, iii. 337 n. Captain Newbery informed me that Mr. Stephen also drew Chapters II–VII, XXIII (chiefly) and XXXVI, and that Mr. Cunningham drew sec. 90, most of Chap. XIX, and Chap. XXXIV.

[2] Acts XXXI of 1838, XXII of 1839, IV of 1849, XVI of 1852, XVIII of 1862 (except secs. 26–35, 47–53), and Act XIII of 1865, a useful measure, carried by Sir H. Maine, which (*inter alia*) abolished grand juries. Certain other provisions relating to the criminal procedure of the Supreme Courts were contained in 9 Geo. IV. c. 74, which was repealed by Act X of 1875, with the exception of secs. 1, 7, 8, 9, 25, 26, and 56. It also repealed certain enactments (in Acts XXIV of 1866 and XIII of 1869) relating to the High Court for the N.W. Provinces.

[3] Except secs. 97 and 98 (= Act X of 1882, sec. 305), which were drawn by Mr. Hobhouse.

The Code of 1872 was also inapplicable to the Magistrates' Courts at Calcutta, Madras, and Bombay. For these, provision was made by Act IV of 1877 (*to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns*). This Act, which increased the jurisdiction of the Presidency Magistrates, assimilated their procedure to that of the provincial Magistrates, and made many other improvements, was drawn by the writer and carried by Mr. (now Sir Theodore) Hope. The Presidency Magistrates.

It thus appears that, before the present Code of Criminal Procedure was passed, no less than three such Codes were in operation in British India: Act X of 1872, amended by Act XI of 1874, which was in force throughout the Mufassal; the High Courts' Act, X of 1875, which was in force in the Presidency-towns, Allahabad and Lahore; and the Presidency Magistrates' Act, IV of 1877, which, also, was in force in the Presidency-towns.

Many of the provisions of these Codes merely repeated one another; many of their rules, though dealing with the same subjects, unnecessarily varied in language; and the result was that the bulk of the Indian Statute-book was far greater than it needed to be, and that the Courts when construing one Code were often deprived of the guidance of prior decisions on another.

The primary object of the present Code, which was framed by the writer[1] at the suggestion of the Secretary of State in his despatch (Legislative), No. 44, dated 26th October, 1876[2], was to recast Objects of the present Code.

[1] In framing his draft he was aided chiefly by the decisions of the High Courts on Act X of 1872, but also by many of Livingston's remarks. In revising the draft he was aided by Mr. Justice Straight, who suggested (inter alia) the insertion of sec. 310, by Messrs. F. R. Cockerell and B. Colvin of the Bengal Civil Service, and by Mr. Fitzpatrick, Secretary, and Mr. R. J. Crosthwaite, Acting Secretary, to the Government of India in the Legislative Department. Mr. Fitzpatrick, in particular, redrew chapters VIII (*Security for keeping the peace*) and X (*Public Nuisances*).

[2] The Secretary of State's words were:—'The Draft Code of Criminal Procedure prepared by the Indian Law Commissioners in 1856 was intended by them for use in all the Courts, and although it was not deemed advisable to carry out the whole of this design when the Code of Criminal Procedure was enacted in 1861 for the Mufassal only, I think that circumstances are now more favourable to its completion. In the preparation of the High Courts Criminal Procedure Act, 1875, and of the present Bill [the Presidency Magistrates Bill, afterwards Act IV of 1877] the whole of the Code of Criminal Procedure has been carefully reviewed and freely amended, and it seems desirable that the Mufassal districts should not continue under a less perfect law than the Presidency-towns, but that they should enjoy the benefit of the latest corrections and improvements; and that whatever rules are intended to be observed by all the Courts alike should be placed before all in the same language, care being taken at the same time to define the special duties and procedure of each. This is

the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous[1] reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for that country. The language and arrangement of Act X of 1872 were, for obvious reasons, departed from only so far as was necessary for the main purpose of the Code. But it was obviously impossible to reproduce the inartificial wording of many of the sections, and an arrangement according to which, for example, the provisions for the prosecution of crimes came before the provisions for their prevention, and the charge (i. e. the written accusation of an offence) was dealt with *after* trials, appeal and execution.

Consolidation.

Though many of the outlying Acts and Regulations dealing with Criminal Procedure had been repealed and re-enacted by Act X of 1872, many more were still untouched, and the secondary object of the present Code was to consolidate these enactments, which were seven in number: namely, Acts XXIII of 1840 (Execution of process): V of 1861, section 6, part of sections 24 and 35 (Police): the unrepealed portions of XVIII of 1862 (Administration of Criminal Justice in the High Courts): II of 1869 (Justices of the Peace): XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction): XXI of 1879, Chapter III (Inquiries in British India into crimes committed abroad by British subjects); and Bengal Regulation XX, 1825 (Jurisdiction of Courts Martial).

The result of consolidating the Acts and the Regulation above specified was to substitute a single Code of 568 sections for eleven enactments containing 1020 unrepealed sections.

Arrangement of the present Code.

The present Code is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecu-

the best safeguard against conflicting rulings.

'I request, therefore, that your Excellency in Council will direct your attention to the question whether the Criminal Procedure Code of 1872 might not now be recast so as to combine with it the substance of the High Courts Act, 1875, and of the present measure [the Presidency Magistrates Act, IV of 1877], and thus at length to give to India a complete Code of Criminal Procedure.'

[1] About two hundred.

tions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

I.—Preliminary.

Part I consists of a single chapter containing the usual preliminary matter. The Code is declared (sec. 1) to extend to the whole of British India; and it has been applied, by executive orders, to many places outside the empire[1]. It contains no clause relating to personal application; but Act XXI of 1879, sec. 8, declares that the law relating to criminal procedure for the time being in force in British India shall, subject to modification by the Governor General in Council, extend (*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty, and (*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

Local extent.

Personal extent.

The wording of some of the definitions in Act X of 1872 has been amended; and definitions of 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule,' 'place,' and 'police station' have been added. The definition of 'complaint' has been amended so as to exclude the report of a police-officer and information given to a police-officer; and the definition of 'investigation' has been extended so as to comprise the proceedings of persons authorised by a Magistrate under section 160 or 203 to make local investigations. The definition of 'cognisable offence'—a somewhat ill-chosen name[2] for an offence for which a police-officer may arrest without warrant—has been amended so as to connect it with the second schedule. 'Warrant-case' is defined as a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months, and 'summons-case' as a case relating to an offence not so punishable. A clause has been added to the definition of 'High Court' so as to enable the Governor General in Council to appoint in outlying territories where no such Court is established by law, an officer to perform its functions under the Code. Expressions such as 'special law' and 'local law,' defined in the Penal Code, have the meanings attached to them respectively by that Code.

Definitions.

Cognisable offence.

Warrant-case.

Summons-case.

II.—Criminal Courts.

Part II, as to the constitution and powers of the Criminal Courts and offices, consists of two chapters, of which the first deals (*a*) with

[1] See Appendix A to the Code. [2] Stephen, *Hist. Crim. Law*, iii. 331.

the five classes of Criminal Courts other than the High Courts[1] and other Courts created by special enactments[2], (*b*) with territorial divisions, (*c*) with Courts outside the Presidency-towns, (*d*) with the Courts of the Presidency Magistrates, (*e*) with Justices of the Peace, and (*f*) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The provisions of the Police Act (V of 1861), section 6, have been incorporated in this chapter, section 14. The Local Government has been empowered (sec. 16) to make rules for the guidance of Magistrates' Benches. This will result in uniformity of practice wherever such uniformity is desirable. Assistant Sessions Judges have been declared (sec. 17) subordinate to the Sessions Judge in whose Court they exercise jurisdiction. This precludes a doubt which had been raised on the subject.

Powers of Judges and Magistrates.

The second chapter treats of the powers of Judges and Magistrates, the description of offences cognisable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save that Magistrates of the first class are forbidden (sec. 29) to try offences under special or local laws which are punishable with imprisonment for more than seven years: such grave cases should be tried by a higher Court.

It is desirable that the police powers which magistrates can exercise in investigating offences should be clearly defined. In section 40 (=Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to show that powers conferred by one Local Government do not accompany an officer when he is transferred to a province under another Local Government (2 Cal. 117).

In connection with section 33, as to power to sentence to imprisonment in default of payment of fine, the Council passed simultaneously with the Code a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court (1 Bom. 223), that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

[1] As to these, see 24 & 25 Vic. c. 104, and the Acts constituting the Chief Court of the Panjáb, the Judicial Commissioners of Oudh, the Central Provinces and Burma, and the Recorder of Rangoon.

[2] Courts Martial (44 & 45 Vic. c. 58: Act V of 1869): the Vice-Admiralty Courts (26 & 27 Vic. c. 24, etc.): the Court for the trial of Bengal pilots (Act XII of 1859): and the Bombay Court of Petty Sessions (Rule, Ordinance and Regulation I of 1834, title 2, articles 1, 2, 5, 6, 7, 8).

III.—General Provisions.

Part III contains certain general provisions which it seemed convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates, the police and persons making arrests: arrest, escape and retaking: processes to compel appearance, processes to compel the production of documents, etc., and processes for the discovery of persons wrongfully confined. Here, again, the changes in the law are little more than verbal. But to the offences which the public are bound to assist in preventing, have been added (sec. 42) attempts to injure public property, railways, canals, and telegraphs. The section (45) requiring village-headmen, etc., to report, has, for obvious reasons, been extended to escaped convicts and proclaimed offenders, and (to provide for villages in hill-passes through which bands of dacoits habitually proceed) also to cases where the criminal merely goes through the village.

Aid and information.

Nothing in the whole course of criminal procedure is so productive of vexatious proceedings and serious consequences as Arrests. The utmost care therefore has been taken in framing the sections on this subject so as to make them clear and precise. The wording of section 178 of the Code of 1872, which empowered the police to use 'all means necessary to effect the arrest' of a person forcibly resisting or attempting to escape, was dangerously wide. The present Code (sec. 46) accordingly explains that this power does not give the right to cause the death of an arrested person who is not accused of an offence punishable with death or with transportation for life. In England, if the offence with which the runaway is charged is a treason or a felony (which includes manslaughter, robbery, rape and even larceny), or a dangerous wound given, the homicide is justifiable, and so under the New York Code of Criminal Procedure, section 174. In Scotland, however, the killing is justifiable only when he is charged with a capital offence[1]. The Code here, as settled by the Select Committee, followed the law of Scotland, which, in Mr. Mayne's opinion, is in India the safer rule. The words 'or with transportation for life' were afterwards introduced in Council chiefly to enable the police to cope with the well-armed and desperate bands of dacoits who from time to time infest some of the districts of the North-Western and the Central Provinces. These outlaws will not surrender unless the only alternative be that of death, and if the police are not allowed to meet them on at least equal terms, the attempt to arrest them may be abandoned.

Arrests.

[1] See Alison's *Principles of the Criminal Law of Scotland*, pp. 36, 37.

The section (46) authorising, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them. Power has been given (sec. 49) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein. Persons making arrests have been expressly empowered (sec. 53) to take from the person arrested any offensive weapons which he may have about him. The police have been authorised (sec. 54) to arrest, without warrant, deserters from the Navy; and sections (66, 67), equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

The period for which a person arrested without warrant may be detained by the police is carefully limited by section 61.

The power to arrest without warrant persons against whom a hue and cry has been raised[1] is omitted, as that obsolete common-law process is unknown in India. The section authorising masters and mates to arrest deserters from ships is also omitted, as the matter is sufficiently provided for by the Merchant Shipping Act[2].

Service of summons.

Under the Code of 1872, section 153, summonses issued by Magistrates were ordinarily served 'through a police-officer': the present Code (sec. 68) provides that, subject to rules to be made by the Local Government, they may also be served by an officer of the Court. Provision is made (secs. 73, 74) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.

Warrant of arrest.

Section 75 requires that all warrants of arrest, whether issued in the Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, did not in such cases require a seal. Warrants of arrest issued by a Bench of Magistrates may be signed by any member of the Bench. This legalises what probably was the practice.

Sub-divisional Magistrates have been empowered (sec. 78) to direct warrants to landholders, etc., for the arrest of escaped convicts. This extension is in harmony with the large powers generally possessed by Magistrates in charge of subdivisions.

Section 87 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

Attachment.

The Code of 1872 did not provide how attachment of debts

[1] Act X of 1872, sec. 92, cl. 3.

[2] Act I of 1859, sec. 86.

and other moveable property is to be effected. Provision has, therefore, been made (sec. 88) for this purpose; and the powers, duties and liabilities of receivers have been declared by reference to the Code of Civil Procedure.

Production of documents.

A person required merely to produce a document will (as under the Civil Procedure Code, section 164) be deemed to have complied with the requisition, if he causes the document to be produced instead of attending personally to produce it (sec. 94). This amendment obviously tends to save time and expense, and thus to diminish the unpopularity of our Courts.

Search-warrants.

Section 100 gives Presidency Magistrates, Magistrates of the first class, and Sub-divisional Magistrates, power to issue warrants to search for persons wrongfully confined. No such power, though needed, was supposed to exist in India, except, of course, in the Presidency-towns, where the High Courts issued, under Act X of 1875, directions of the nature of a *habeas corpus*.

Provision is made (sec. 103) for making a list, signed by witnesses, of things found in execution of a search-warrant beyond the jurisdiction of the Court issuing it. The requirement of the signature of the witnesses tends to check the irregularities which sometimes occur in the course of searches.

IV.—Prevention of Offences.

Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the police. Nothing is here said as to the prevention of intended offences by personal resistance. For the Penal Code (secs. 96–106) contains rules as to the cases in which such resistance is lawful and the degree to which it may be carried.

Security for keeping the peace.

Chapter VIII. In the chapter relating to security for keeping the peace, and for good behaviour, the section (106) dealing with security for keeping the peace on conviction has been extended to cases in which the accused is convicted of criminal intimidation by threatening injury to person or property. This is an offence of the same nature as taking unlawful measures with the intention of committing a breach of the peace, and should therefore, as regards the taking of security, be placed on the same footing. When the conviction is set aside on appeal or otherwise, the bond will become void. On this the Code of 1872 was silent.

In section 110 (=sections 505, 506 of the Code of 1872) the words which give the Magistrate power to demand security from persons of notoriously bad livelihood or of a 'dangerous character' have been omitted. It was objected that these words were vague, and that the powers which they placed in the hands of the police were liable to great abuse.

In 1882, there was in the North-Western Provinces a class of bad characters who habitually extorted money from respectable persons by threatening to insult or beat them. Section 110 contains a provision (inserted at the suggestion of the Local Government) enabling Magistrates to protect the public against such a system of extortion. It should also be extended so as to apply to habitual protectors or harbourers of thieves and to habitual aiders in the concealment or disposal of stolen property.

The Magistrate is empowered (sec. 112) to make an order as to the character and class of the sureties required. This, it is hoped, will prevent certain persons making a trade of becoming sureties. The object of the law is not merely to provide a money-security, but also to obtain respectable persons as guarantees for the good behaviour of the criminal concerned.

For the purposes of the section (117) as to enquiring into the truth of the information upon which a Magistrate has acted under this chapter, the fact that a person is an habitual offender may be proved by evidence of general repute.

The Code of 1882 contains no provision corresponding to sections 499 of the Code of 1872 and 211 of the Presidency Magistrates' Act. If, before the expiration of the term of the original bond, it appears to the Magistrate unsafe to release the obligor at the end of that term, in justice to the obligor fresh proceedings should be instituted.

Security for good behaviour.

Some change has been made (sec. 117) in the manner of conducting inquiries regarding security for good behaviour. They are under the present Code made as in warrant-cases, instead of as in summons-cases, which was formerly the practice. Where the person who would otherwise be ordered to give security is a minor, the bond (section 118) will be executed only by his sureties. It has been made clear in section 126 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Sub-divisional Magistrates are empowered (sec. 109) to require security for good behaviour.

Dispersion of unlawful assemblies.

Chapter IX, on dispersion of unlawful assemblies, contains the rules for calling out and employing the military, in aid of the

civil, power. They were first enacted in the Code of 1872, and embody (according to Sir Fitzjames Stephen[1]) the principles laid down in the charge of Tindal C.J. to the grand jury of Bristol in 1832, as to the duty of soldiers in dispersing rioters. The rules carry the law somewhat further than it has yet been carried in England, as they expressly indemnify all persons acting in good faith in compliance with requisitions under sections 128 and 130, and forbid prosecutions of magistrates, soldiers, and police officers, except with the sanction of the Governor-General in Council. In this chapter volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's Army.

Suppression of nuisances.

In Chapter X, as to Public Nuisances, section 133 has been extended to cases of keeping goods or merchandise (for example, damaged rice) injurious to the public health, and of carrying on occupations offensive to the religious feelings of any considerable section of the community. The latter alteration is intended to meet such cases as that of a butcher exercising his trade in a Hindú town so as to cause risk of breach of the peace.

Chapter XI deals with temporary orders in urgent cases of nuisance. The power conferred by section 518 of the Code of 1872 was intended to be exercised only in urgent cases where a speedy remedy is desirable. The present Code (sec. 144) provides that no orders under Chapter XI shall remain in force for more than two months, unless in case of danger to human life, health or safety, or a riot or affray, the Local Government directs otherwise. Where time allows, the procedure must be under Chapter X.

Disputes as to immoveable property.

Chapter XII empowers Magistrates to interfere in disputes as to immoveable property likely to cause a breach of the peace, to decide whether any of the parties is then in actual possession of the subject of dispute, and if so, to declare him entitled to retain possession until evicted in due course of law, and has been expressly restricted to cases in which the property is tangible. It is founded on Act IV of 1840 and the seven Regulations mentioned in that Act, and is of great use in India, where disputes as to boundaries, water-courses, alluvion and diluviated land are frequent and sometimes sanguinary. The section seems to require amendment so as to render it impossible to decide (as the Calcutta High Court has decided[2]) that a dispute as to the right to collect rent is a dispute concerning tangible immoveable property.

Doubts had been raised as to whether the report of the person

[1] Hist. Crim. Law, iii. 343. [2] 11 Cal. 413.

deputed (under section 148) to make a local inquiry may be read as evidence in the case. The Code settles this in the affirmative.

Preventive action of police.

Chapter XIII treats of the action of the police in preventing the commission of cognisable offences, injury to public property, and the use of false weights and measures.

V.—Information to the Police, and their power to investigate.

Part V consists of a single chapter (XIV) relating to information to the police concerning the commission of offences, and their power to investigate cases. It corresponds with Chapter X of Act X of 1872, and sections 379 and 380 of the same Act. It deals with the examination of witnesses by the police, searches, and sending cases to the Magistrate when the evidence is sufficient. Precautions are taken (secs. 162, 163) against abuse by the police of their powers under this chapter.

The words 'or that immediate arrest is not necessary,' which were contained in section 117 of Act X of 1872, have been omitted from section 158 of the present Code, as it is not apparent why a police-officer should be debarred from investigating a case of a cognisable offence because he does not at starting feel himself justified in arresting any person.

Section 164 makes it clear that confessions to Magistrates shall not only be 'taken,' but signed and certified, like examinations of accused persons. In the form of memorandum relating to confessions words have been introduced to show that the confession was taken in the Magistrates' presence and hearing, and that it contains a full and true account of the statement.

Searches.

In sections 165 and 166, dealing with searches by the police, the law has been amended so as to meet difficulties which had arisen in practice. In section 167 it has also been amended. On the one hand, there is strong objection to allowing an accused person to be detained at a police-station longer than is necessary, and, on the other, to insist on his being forwarded to the Magistrate, when his presence on the spot may be indispensable for tracking out crime or recovering property, might be a serious impediment to justice. Under proper precautions, the detention of the accused for sufficient reasons is allowed, but the period of detention has been limited to fifteen days in the whole.

Detention of the accused.

Inquiries into deaths.

Part V also requires (sec. 174) the police to inquire and report on suicides and deaths caused by another person, an animal, machinery or an accident. Power resembling that conferred on

Coroners by Act IV of 1871, section 11, has been given (sec. 176) to Magistrates authorised to hold inquests to disinter and examine corpses in order to discover the cause of death.

VI.—Proceedings in Prosecutions.

Having thus dealt with the means of preventing inchoate offences and arresting the course of such as are in operation, having also dealt with information to the police of offences and the consequent preliminary investigation, the Code next sets forth the mode of conducting prosecutions for consummated offences.

Part VI treats of proceedings in prosecutions up to appeal, and is divided into sixteen chapters, arranged as follows:—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials; XVI. Complaints to Magistrates; XVII. Commencement of Proceedings before Magistrates; XVIII. Inquiry into cases triable by the Court of Session or High Court; XIX. The Charge; XX. Trial of Summons-Cases by Magistrates; XXI. Trial of Warrant-Cases by Magistrates; XXII. Summary Trials; XXIII. Trials before High Courts and Courts of Session; XXIV. General Provisions as to Inquiries and Trials; XXV. Evidence; XXVI. The Judgment; XXVII. Submission of Sentences for Confirmation; XXVIII. Execution; XXIX. Suspensions, Remissions, and Commutations of Sentences; XXX. Previous Acquittals or Convictions.

It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

Jurisdiction of Courts in inquiries and trials.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial. Here the general rule is (sec. 177) that every offence shall be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. But there are special provisions for cases where the act has been done in one local area and the consequence has ensued in another (sec. 180): where the act, e.g. an abetment, is an offence by reason of its relation to another act which is also an offence: where it is uncertain in which of several local areas an offence has been committed: where an offence is committed partly in one local area and partly in another: where the offence is a continuing one and continues to be committed in more local areas than one: where it consists of several acts done in different local areas (sec. 182): where it is committed on a journey (sec. 183). There are also special rules as to inquiry into and trial of the offences of thuggee, dacoity, escape from custody, criminal mis-

appropriation, criminal breach of trust and theft (sec. 182), and as to offences against the laws relating to railways, telegraphs, the post-office, and arms and ammunition (sec. 184).

Sections 9 and 10 of the Foreign Jurisdiction Act (XXI of 1879), which deal respectively with the liability of British subjects for offences committed out of British India, and with the reception in evidence of depositions made before Political Agents, have been transferred to this part of the Code (sections 188 and 189), which is obviously their proper place.

To the provisions contained in the previous law regarding the transfer of cases the present Code adds a clause (sec. 192), providing that, when any Magistrate of the first class, specially empowered in this behalf by the District Magistrate, has taken cognisance of any case, he may transfer it for inquiry or trial to any other competent Magistrate in such district. This enables such Magistrates to distribute the work in their Courts, when it is necessary to do so, with less delay than was formerly unavoidable.

Chapter XV deals, secondly, with the conditions requisite for the initiation of proceedings,—the receipt of a complaint: a police-report: information from any other person: the Magistrate's own knowledge or suspicion; or, in the case of a contempt, the sanction or complaint of the public servant concerned or of his official superior.

Section 195 requires that the sanction to entertain complaints of contempts and certain offences against public justice or relating to documents given in evidence shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed. The sanction may be revoked or granted by any authority to which the authority giving or refusing it is subordinate. And in order to remove doubts which had been felt on the point, it is declared that, for the purposes of this section, every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie. Sanctions or complaints are also required in the case of prosecutions for acts done in dispersing unlawful assemblies (sec. 132), for state-offences (sec. 196), for acts committed by judges and public servants as such (sec. 197), and for breach of contracts of service, defamation, and certain offences relating to marriage and married women (secs. 198, 199).

Limitation of prosecutions.

No sanction under sec. 195 shall remain in force for more than six months from the date on which it was given; but of course it may be renewed.

The Code contains no other rule for the limitation of prosecutions.

All other offences under the Penal Code,—even mere attempts—even those offences which are compoundable without the permission of the Court—may be prosecuted after any lapse of time, because allowing such prosecutions to be barred would (to use the words of Livingston) 'hold out a reward to ingenious villainy and address in concealment.' But in the absence of a law of limitation there is danger that innocent men may be convicted owing to the death of their witnesses or the destruction of their documentary evidence; and sundry special and local laws have prescribed periods within which offences against their provisions must be prosecuted. Of these laws the chief are as follows: they are here classified according to the periods which they respectively prescribe:—

Five Years.

21 Geo. III. c. 70, sec. 7 (prosecution of the Governor-General, etc.)

Three Years.

24 Geo. III. c. 25, sec. 82 (prosecution of British subjects guilty of offences in India).

Two Years.

Act XV of 1872, sec. 76 (Marriage of Christians).

One Year.

The Army Act, 1881 (44 & 45 Vic. c. 58), sec. 170.
XX of 1847, sec. 16 (Copyright).
XIII of 1857, sec. 26 (Opium, Bengal).
Ben. Act V of 1866, secs. 15, 24 (Hackney Carriages, Calcutta).

Six Months.

VI of 1879, sec. 9 (Preservation of Elephants).
XXII of 1881, sec. 47 (Excise, Northern India, Burma, Coorg).
XII of 1882, sec. 11 (Salt).
XVIII of 1882, sec. 16 (Burma Steam boilers).
V of 1886, sec. 13 (Mirzapur Stone Mahál).
Mad. Act VI of 1871, sec. 42 (Excise on Salt).
Mad. Act I of 1873, sec. 9 (Wild Elephants).
Mad. Act I of 1886, sec. 72 (Excise).
Mad. Act II of 1886, sec. 87 (Madras Harbour).
Bom. Act V of 1873, sec. 26 (Steam boilers).
Bom. Act VII of 1873, sec. 62 (Salt).
Ben. Act VII of 1864, sec. 37 (Salt).
Ben. Act VII of 1878, sec. 72 (Excise).
Ben. Act III of 1879, sec. 12 (Steam boilers).

Four Months.

Bom. Act V of 1878, sec. 67 (Excise).

Three Months.

XIX of 1850, sec. 18 (Binding Apprentices).
XXIV of 1859, sec. 53 (Police, Madras).

XLVIII of 1860, sec. 29 (Police).
V of 1861, sec. 42 (Police).
XX of 1869, sec. 26 (Volunteers).
X of 1870, sec. 58 (Land Acquisition).
VII of 1878, sec. 198 (Sea Customs).
XI of 1878, sec. 33 (Arms).
XX of 1879, sec. 12 (Glanders and Farcy).
II of 1880, sec. 19 (Burma District Cesses and Police).
XV of 1882, sec. 97 (Presidency Small Cause Courts).
Mad. Act VIII of 1867, sec. 75 (Police, Madras Town).
Mad. Act III of 1871, sec. 169 (Improvement of Towns).
Mad. Act I of 1884, sec. 446 (Madras City Municipal Act).
Bom. Act VII of 1867, sec. 42 (District Police).
Bom. Act III of 1872, sec. 296 (Bombay Municipality).
Bom. Act VI of 1873, sec. 82 (Mufassal Municipalities).
Ben. Act IV of 1866, sec. 99 (Calcutta Police).
Ben. Act III of 1884, sec. 353 (Mufassal Municipalities).

Two Months.

Ben. Act IV of 1876, sec. 351 (Calcutta Municipality).
Ben. Act VIII of 1880, sec. 12 (Contagious Diseases, Animals).

One Month.

XIX of 1850, sec. 18 (Binding Apprentices).

Ten Days.

Mad. Act II of 1866, sec. 16 (Cattle Disease)[1].

Complaints to Magistrates.

Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (sec. 201) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

The present Code makes it clear that the power (sec. 202) to postpone the issue of process cannot be exercised by a Magistrate of the third class.

Commencement of proceedings.

Chapter XVII treats of the commencement of proceedings before Magistrates: shows when a summons or a warrant should issue, and enables the Magistrate in certain cases (sec. 205) to dispense with the personal attendance of the accused.

[1] For similar limitations in England, see Archbold, 79, 80. In Scotland there seems to be a vicennial prescription for *all* crimes where no sentence of fugitation has been pronounced and no step has been taken to bring the offender to trial. In the case of wrongous imprisonment there is a triennial prescription. According to the New York Code of Criminal Procedure, §§ 141, 142, a prosecution for murder (or abetment of murder, 4 Wend. 229) may be commenced at any time; but an indictment for every other crime must be found within five years after its commission, except where a less term is prescribed by statute.

In Chapter XVIII—of inquiry into cases triable by the Court of Session or High Court—power is given (sec. 209) to the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. This chapter also contains provisions as to the framing of the charge (sec. 210), the witnesses for the defence (secs. 211, 212, 216, 217), and the custody of the accused pending trial (sec. 220). Inquiry into cases triable by Sessions Court.

The accused should have full notice of the offence charged against him. Chapter XIX, therefore, deals with the form of the charge (secs. 221–224): the effect of the absence of a charge or of errors in one (secs. 225, 232): alterations in charges (sec. 227): joinder of charges (sec. 233); and the trial at one trial for several offences (secs. 234, 235, 236, 239). It extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made in the Presidency Towns, Allahabad and Lahore by Act X of 1875; and with reference to Mr. Justice West's observations in 11 Bomb. H. C. 241, on the corresponding section (457) of the Code of 1872, section 238 of the present Code has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence. The charge.

From the section (235), corresponding with section 454 of the Code of 1872, have been omitted all provisions as to the amount of punishment. They obviously belong to substantive law, not to procedure, and find their proper place in the Penal Code as amended by Act VIII of 1882. The illustrations have also been amended.

Provision has been made in section 238 for the case where a person charged with an offence proves circumstances which reduce it to a minor offence. He may then be convicted of the minor offence, though he is not charged with it.

Chapter XX prescribes a simple procedure for the trial by Magistrates of summons-cases. No formal charge need be framed. The Magistrate states to the accused the particulars of his alleged offence, and asks him if he has any cause to show why he should not be convicted. If he admits his guilt he is convicted. If he does not, evidence is taken—a mere memorandum of its substance being made (sec. 355)—and he is acquitted or sentenced according to its effect. This chapter should expressly provide, in sec. 244, for cross-examination of witnesses. When the complaint is frivolous or vexatious, the Magistrate may order the complainant to pay the accused compensation not exceeding rs. 50. To the section (250) giving this power a clause has been added, providing that, when awarding compensation in any subsequent civil suit relating to the Trial of summons-cases. Frivolous complaints.

same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Trial of warrant-cases.

Chapter XXI deals with trials of warrant-cases by Magistrates. The chief distinction between this procedure and that provided for the trial of summons-cases is that under Chapter XXI the Magistrate first hears the complainant (if any) and takes the evidence for the prosecution, and then, if there is ground for presuming the guilt of the accused, frames a written charge to which he is required to plead. Moreover, the evidence of each witness is taken down in writing (sec. 356): it is not enough (as in trying a summons-case) to make a memorandum of its substance. Here, as in Chapter XVIII, has been inserted a clause (sec. 253) authorising the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. Under the Code of 1872 (sec. 215), no matter how groundless the charge might be, the Magistrate was compelled, before discharging the accused, to take the evidence of the complainant and of all the witnesses whom the prosecution might bring forward. The provision in the same Code, sec. 218, that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution, has been expressly confined (sec. 256) to cases where these witnesses are present in the Court or its precincts. The power to recall witnesses for the prosecution after they had left the Court was often abused for the purpose of harassment and delay.

Summary trials.

Chapter XXII deals with summary trials of the minor offences specified in sec. 260. Here the Local Government is authorised to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily. The omission in the Code of 1872 to provide for these abetments and attempts was obviously *per incuriam*. The offences of retaining stolen property not exceeding rs. 50 in value, and assisting in the concealment or disposal of stolen property not exceeding rs. 50 in value, have been added to the list of those triable in a summary way; and the offence of receiving stolen property will not be so triable where its value exceeds that amount. The limit of imprisonment under this chapter is three months (sec. 262). Where no appeal lies, the Magistrate or Bench neither records the evidence nor frames a formal charge; but merely enters certain particulars in such form as the Local Government directs (sec. 263). No reasons are given except in case of conviction.

Trials before High Courts and

Chapter XXIII provides a common procedure for the High Courts and the Courts of Session in trials before those tribunals.

But all trials before a High Court must be by a jury of nine; all trials before a Court of Session must be either by a jury of an uneven number, not more than nine nor less than three, or with the aid of assessors; and prosecutions before the Court of Session must be conducted by a public prosecutor (sec. 270). Sections 271, 272 deal with the plea of guilty (which there is no power to withdraw), refusal or omission to plead, and 'claim to be tried.' The pleas of previous conviction and previous acquittal are dealt with in another part of the Code (sec. 403). There is no plea of insanity, this matter being provided for by Chapter XXXIV. There are also special rules (secs. 274, 275) as to juries, challenges (secs. 277–279), foremen (sec. 280), swearing jurors (sec. 281), discharging juries (sec. 282), assessors (secs. 284, 285), the procedure to the close of the case, the charge (sec. 297), the respective duties of the judge and the jury (secs. 298, 299), and, lastly, the verdict (secs. 301–307). As to this the rules are peculiar:— Courts of Session.

In the High Court.

When the nine jurors are unanimous, or when as many as six are of one opinion and the judge agrees with them, the judge gives judgment accordingly.

When the jury are satisfied that they will not be unanimous, but six are of one opinion, the foreman so informs the judge, and if the judge disagrees with the majority he at once discharges the jury.

If there are not so many as six who agree, the judge, after such interval as he thinks reasonable, discharges the jury.

In the Court of Session.

When the judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority (two, three, four, or five) of the jurors, he gives judgment accordingly. If the accused is acquitted, the judge records judgment of acquittal. If he is convicted, the judge passes sentence.

But if the judge disagrees so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he submits it accordingly, recording the grounds of his opinion.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (sec. 307) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, was the intention of the corresponding clause of section 263 of Act X of 1872. The change was suggested by the decision of Markby J. in 3 Cal. 189.

To prevent jurors and assessors from being biassed against the accused by the knowledge that he is an old offender, section 310 provides that 'the part of the charge stating the previous conviction shall not be read out . . . unless and until he has either pleaded Offence committed after previous conviction.

guilty to, or been convicted of, the subsequent offence.' There is a similar rule in England (6 & 7 Wm. IV. c. 111).

General provisions.

Chapter XXIV contains general provisions as to inquiries and trials. The subject of tendering pardons to accomplices is first dealt with. Such tender can only be made in cases triable exclusively by the Court of Session or High Court. In cases where a pardon is tendered to and accepted by a person, and such person gives evidence before a Magistrate in a preliminary inquiry, he should not be forced to adhere to that evidence in a subsequent trial, through fear of being prosecuted on an alternative charge of giving false evidence either before the Magistrate or the Judge. It might happen that he was wrongly induced or coerced into giving evidence before the Magistrate. Section 339 accordingly provides that no prosecution for giving false evidence in a statement made under promise of pardon shall be entertained without the sanction of the High Court.

Pardons to accomplices.

Examination of the accused.

Sec. 342 gives the power to examine the accused for the purpose, only, of enabling him 'to explain any circumstances appearing in the evidence against him.' The section assumed its present form partly owing to a judgment of the High Court of Bengal (6 Cal. 102), partly owing to the following words of Edward Livingston[1]: 'An unrestrained right of interrogating is also very apt to produce insidious and catching questions. Instead of a cool and impartial attempt to extract the truth, the examination becomes a contest, in which the pride and ingenuity of the magistrate are arrayed against the caution or evasions of the accused; and every construction will be given to his answer that may fix upon him the imputation of guilt.' It may be added that badgering by the judge is apt to arouse undue sympathy for the prisoner.

Compounding offences.

Much doubt existed as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject was contained) was in 1882 excessively obscure, and this obscurity was increased rather than diminished by the illustrations annexed to that section. The Criminal Procedure Code of 1882 repeals these illustrations; and section 345 declares in unmistakeable language that certain specified offences, and no others[2], may be compounded. These are—

Uttering words etc. with deliberate intent to wound religious feelings (Penal Code, sec. 298).

Causing hurt (Penal Code, secs. 323, 334).

[1] Works, i. 355.

[2] It may therefore be doubted whether sec. 55 of the Madras Forest Act, Mad. Act V of 1882, and sec. 67 of the Madras Excise Act, Mad. Act I of 1886, are not *ultra vires* of the local legislature by which they were enacted.

Wrongfully restraining or confining any person (Penal Code, secs. 341, 342).

Assault or use of criminal force (Penal Code, secs. 352, 355, 358).

Unlawful compulsory labour (Penal Code, sec. 374).

Mischief, when the loss or damage is caused to a private person (Penal Code, secs. 426, 427).

Criminal trespass and house-trespass (Penal Code, secs. 447, 448).

Criminal breach of contract of service (Penal Code, secs. 490, 491, 492).

Adultery, and enticing etc. a married woman (Penal Code, secs. 497, 498).

Defamation (Penal Code, sec. 500).

Printing or engraving defamatory matter (Penal Code, sec. 501.)

Sale of printed or engraved substance containing defamatory matter (Penal Code, sec. 502).

Insult intended to provoke a breach of the peace (Penal Code, sec. 504).

Criminal intimidation, except when the offence is punishable with imprisonment for seven years (Penal Code, sec. 506).

The offences of voluntarily causing hurt or grievous hurt, and those of causing hurt or grievous hurt by an act which endangers life, which are punishable under the Penal Code, sections 324, 335, 337 or 338, are compoundable with the permission of the Court, and by the person to whom the hurt has been caused.

Simultaneously with the new Code the Indian Legislature passed Act VIII of 1882, section 6 of which, for the Exception to section 280 of the Penal Code, substituted the following :—

'*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.'

Section 349 prescribes a procedure in cases where a second or third class Magistrate finds that he cannot pass a sentence sufficiently severe. Section 350 provides for convictions or commitments on evidence partly recorded by one Magistrate and partly by his successor, and should be modified so as to make it clearly applicable to inquiries under section 107.

Taking evidence.

Chapter XXV contains rules as to the mode of taking and recording evidence in inquiries and trials (secs. 353–360), and as to the interpretation of evidence to the accused or his pleader (sec. 361). The evidence must, as a rule, be taken down by the Magistrate or Judge, or in his presence and hearing. The provisions as to this

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subject do not apply to the High Courts or the Chief Court of the Panjáb. The Presidency Magistrates are provided for by section 362. It is hardly necessary to say that the Indian, like the English, system of criminal procedure does not permit evidence to be taken in secret.

The judgment.

Chapter XXVI deals with the judgment, the time and place of delivering it (sec. 366), its language and contents (sec. 367). Provision is made (sec. 371) for explaining it to the accused and giving him a copy or translation of it.

Confirmation of sentences.

Chapter XXVII treats of the confirmation of sentences. This is necessary (*a*) where a Sessions Judge, Additional Sessions Judge, or Joint Sessions Judge passes a sentence of death, and (*b*) where an Assistant Sessions Judge or a specially empowered District Magistrate passes a sentence of imprisonment for a term exceeding four years, or any sentence of transportation (secs. 31, 34). In case (*a*) the sentence is submitted for confirmation to the High Court: in case (*b*) to the Sessions Judge. The confirming authority may make further enquiry or direct it to be made (secs. 375, 380), and may alter the sentence or acquit the accused.

Execution.

Chapter XXVIII, Execution.—Here the Code deals with the execution of sentences of death (sec. 381): with the postponement and, if the High Court think fit, commutation of such sentences in the case of pregnant women (sec. 382): with the execution of sentences of transportation and imprisonment (secs. 383–385): the levy of fines (secs. 386–388): the infliction of whipping (secs. 390–395); the execution of sentences on escaped convicts and on offenders already sentenced for another offence (secs. 390–398); and the confinement of youthful offenders in reformatories (sec. 399). In section 395 (= section 313 of the Code of 1872) the imprisonment which may be inflicted in lieu of whipping has been limited to twelve months. But on the other hand, the proviso that the whole period of imprisonment to which the offender is sentenced shall not exceed that to which he was liable by law, or that which the Court is competent to award, has been cancelled, and the power to imprison is thus extended.

Persons sentenced to transportation.

There are no sections in this chapter corresponding with sections 319, 320 of the Code of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and simultaneously with the passing of the present Code, Act IX of 1882 was passed, substituting for section 33 of the Prisoners' Act a section equivalent to the Code of 1872, sections 319, 320.

Chapter XXIX treats of suspensions, remissions and commutations of sentences. Where application is made for the suspension or remission of a sentence, the Government is empowered (sec. 401) to require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion. Suspension and remission of sentence.

The power of the Government to commute punishment (sec. 402) has been so worded as to authorise a sentence of rigorous, to be commuted to one of simple, imprisonment. This could not be done under the Code of 1872. Commutation.

No person should be subjected to a second prosecution for a crime for which he has once been prosecuted and duly convicted or acquitted. Previous acquittal or conviction.

Chapter XXX consists of a single section dealing with the effect of a previous acquittal or conviction by a Court of competent jurisdiction in (it is presumed) British India[1]. Sir Fitzjames Stephen[2] justly says that this section seems misplaced[3]. He thinks it should follow the provisions as to charges. A better place for it would be in the preliminary chapter, where the New York Code places the corresponding section, or after section 271, as to the plea of guilty, where there might be a section dealing with other pleas—want of jurisdiction, previous acquittal, previous conviction, and (in proceedings under certain special laws) limitation.

VII.—Appeal, Reference and Revision.

Part VII deals with appeals, references, and the revisional jurisdiction of the High Court.

Chapter XXXI begins by declaring that no appeal shall lie from any judgment or order of a Criminal Court except as provided by the Code or by any other law for the time being in force. It expressly declares (sec. 412) that there shall be no appeal, except as to the extent or legality of the sentence, where the accused has pleaded guilty and been convicted by the Sessions Court or a Presidency Magistrate, and that there shall be no appeal by the accused in the petty cases and from the summary convictions mentioned in sections 413 and 414. Sentences on European British subjects are excepted from the latter provision (sec. 416). An appeal may lie on a matter of fact as well as a matter of law, Appeals.

[1] The Code is silent as to the effect of a previous conviction or acquittal in another country, when the jurisdiction is concurrent. See as to this the New York Cr. Proc. Code, § 139.

[2] Hist. Criminal Law, iii. 338 n.

[3] It was placed in its present position in order to avoid the forward references to sec. 273.

except where the trial was by jury, in which case the appeal lies on matter of law only (sec. 418). For the purposes of appealing, the alleged severity of a sentence is deemed a matter of law (sec. 418). The power to appeal was liberally bestowed by the Code of 1872, and only three new cases are provided for by the present Code. An appeal has been given (sec. 405) from orders rejecting applications for delivery of attached property. Appeals are also given from convictions in contempt-cases by Courts of Small Causes in the Presidency-towns, and by Registrars and Sub-registrars being also Civil Courts.

The nine appeals given by the present Code are as follows:—

	Appellate Court.
1 From a conviction on a trial by a Magistrate of the second or third class, or by a Bench of Magistrates invested with second or third class powers.	The District Magistrate or a Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals (sec. 407.)
2. From a sentence under section 349 by a Sub-divisional Magistrate of the second class.	Ditto.
3. From a conviction on a trial by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class.	The Court of Session, except where the sentence is subject to the confirmation of that Court, in which case the appeal lies to the High Court (sec. 408). Where the appellant is an European British subject, he may at his option appeal either to the Court of Session or the High Court (sec. 408).
4. From a conviction on a trial by a Sessions Judge or an Additional or a Joint Sessions Judge.	The High Court (sec. 410).
5. From a sentence by a Presidency Magistrate to imprisonment for a term exceeding six months or to fine exceeding rs. 200.	The High Court (sec. 411).
6. From an original or appellate order of acquittal passed by any Court other than a High Court.	The High Court (sec. 417).
7. From the rejection of an application under section 89 for delivery of attached property or its proceeds.	The Court to which appeals ordinarily lie from the sentence of the Court rejecting the application (sec. 405).
8. From the order of a Magistrate (other than the District Magistrate or a Presidency Magistrate) to give security for good behaviour (secs. 118, 126)	The District Magistrate (sec. 406[1]).
9. From a sentence under section 480 or section 485 by	

[1] In this section, after '118' the word and figures or '126' should be inserted.

	Appellate Court.
(*a*) any Court other than a Small Cause Court:	The Court to which decrees and orders made in such Court are ordinarily appealable (sec. 486).
(*b*) a Presidency Small Cause Court:	The High Court (sec. 486).
(*c*) any other Small Cause Court:	The Court of Session for the Sessions Division within which such Court is situate (sec. 486).
(*d*) a Registrar or Sub-registrar being also Judge of a Civil Court:	The Court to which the appeal would lie if the sentence were a decree by him in his judicial capacity (sec. 486).
(*e*) a Registrar or Sub-registrar not being also a Judge of a Civil Court.	The District Judge, or, in the Presidency-towns, the High Court (sec. 486).

Section 408 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 and passing any sentence requiring confirmation by the Court of Session shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session. This puts the appeals in question on the same footing as appeals from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

Appeals from acquittals.

Section 417 empowers the Local Government to direct the public prosecutor to appeal to the High Court from orders of *acquittal* passed by any inferior Court [1]. Such a power is desirable in two cases: where there has been, as occasionally happens in India, a gross miscarriage of justice, and where fresh and credible evidence has been brought forward after the acquittal.

Limitation of appeals.

In the case of all appeals under the Code, the Limitation Act fixes periods within which they must be presented. In the case of an appeal from an acquittal, the period is six months from the date of the judgment appealed against.

Section 423, as to the powers of Appellate Courts in disposing of appeals, does not, as was done by the Code of 1872, empower such a Court to enhance any punishment inflicted by the sentence appealed against. Such an enhancement can now be effected only by the High Court on revision (sec. 439).

[1] So far as regards appeals on matter of law from an acquittal, there were precedents for such a proceeding in the English Statute-book. Under 20 & 21 Vic. c. 43, and 42 & 43 Vic. c. 49, sec. 33, 'an appeal from a Court of summary jurisdiction by special case' may be brought by the complainant on the grounds that the order etc. of the Court is erroneous in point of law or is in excess of jurisdiction. Under the New York Cr. Proc. Code, § 518, there is an appeal (1) upon a judgment for the accused on a demurrer to the indictment, and (2) upon an order of the Court arresting the judgment.

In the case of an appeal from an acquittal, section 427 expressly authorises the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail. In the absence of this power, cases had occurred in which criminals, afraid of the result of the appeal, escaped, and thus made the appeal on behalf of the Government of no avail.

Abatement of appeals.

A section (431) suggested by a decision of the Bombay High Court (2 Bom. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 enables the High Court, where justice to the family of the convicted person so requires, to alter his sentence even after the appeal has abated.

Reference.

Chapter XXXII—of reference and revision—empowers Presidency Magistrates and High Court Judges exercising original criminal jurisdiction to refer questions of law (secs. 432–434). This was suggested, according to Sir Fitzjames Stephen, by the English procedure as to reserving cases for the Court for Crown Cases Reserved. Chapter XXXII also enables certain Courts to call for the records of inferior Courts (sec. 435); and, though they cannot reverse acquittals, they may order persons improperly discharged to be committed (sec. 436), or further inquiries to be made (sec. 437). And it gives the High Courts (sec. 439) ample powers of revision, in exercising which they may enhance sentences. Subdivisional Magistrates empowered by the Local Government in this behalf are authorised (sec. 435) to call for records of inferior Courts. This is in accordance with the powers of control in other respects which they exercise.

Revision.

Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of showing cause why the committal should not be made. Provision to this effect is made by section 436.

Section 437 enables the High Court, Court of Session, or District Magistrate, on examining any record, to direct 'further inquiry' into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged. The section should be amended so as to show clearly that the 'further inquiry' may be directed even when further evidence has *not* been disclosed.

When the Court of Session or District Magistrate reports for

the orders of the High Court the results of examining any proceeding, and recommends that a sentence be reversed, the Court of Session or District Magistrate may order (sec. 438) its execution to be suspended, and the accused, if in confinement, to be released on bail or on his own bond.

Section 439 (corresponding with the Code of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. It cannot, however, convert an acquittal into a conviction; and no order will be made to the prejudice of the accused, unless he has had an opportunity of being heard.

VIII.—Special Proceedings.

Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: proceedings in the nature of *habeas corpus*.

Europeans and Americans.

Chapter XXXIII contains the special rules applicable to criminal proceedings against Europeans and Americans. The Code of 1872 (sec. 72) and that of 1882 (sec. 443) conferred on European British subjects in the Mufussal a right to be tried exclusively by men of their own race, who were either (*a*) Sessions Judges or (*b*) Magistrates of the first class being also Justices of the Peace. These Magistrates might in such cases pass sentences of imprisonment for not more than three months or fine not exceeding a thousand rupees, or both. This was part of the personal law of Anglo-Indians, just as the rules about searches in zanánás[1], *parda* women[2], and natives of rank[3] were (and still are) part of the personal law of the Hindús and Muhammadans. It worked well, and the disreputable Europeans, to whom alone it applied in practice, were unable to hamper justice by claiming a jury. In February 1883, however, Lord Ripon (having previously sought and obtained the permission of the then Secretary of State for India) caused a Bill to be introduced into the Governor General's Council, which became law as Act III of 1884. This measure enables District Magistrates and Sessions Judges, though Natives, to exercise jurisdiction over European British subjects: and empowers District Magistrates, though Natives, to sentence such subjects to imprisonment for six months, fine extending to Rs. 2000, or both. On the other hand, it enables European British subjects, when tried by a District Magistrate,

[1] Act X of 1882, sec. 48. [2] Code of Civil Procedure, sec. 640.
[3] Ibid. sec. 641.

to claim a jury; and has thus, it is to be feared, practically exempted from punishment the class of offenders to whom it applies. When the Code is next altered section 443 should be expressly applied to cases under section 107.

Section 451 removes some unnecessary differences which formerly existed between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned. In particular, it provides that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or assessors may be made up by Americans as well as Europeans. Under the Code of 1872 (sec. 78), the trial of a European British subject before the Court of Session need not be by jury. But under the same Code (sec. 234) an European or American, not being a British subject, had an absolute right to be so tried. The present Code omits the latter provision.

Lunatics. Chapter XXXIV deals with cases (sec. 464) in which the accused appears to be of unsound mind, and with cases (sec. 469) in which, though sane at the time of inquiry or trial, he appears to have been insane at the time of committing the act of which he is accused. Section 466 must be read with the provision in 14 & 15 Vic., cap. 81, as to the removal to England of a lunatic found to be such in India[1]. The power given by sections 433 and 434 of the Code of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475, to the case of persons who, being found to be insane at the time of trial, are committed to custody. Two useful sections, added by Act X of 1886, empower the Government of India to order criminal lunatics, confined by order of a Local Government, to be removed from one province to another, and enable any Local Government to relieve its Inspector General of Prisons from his functions under sections 472, 473, 474.

Contempts. Chapter XXXV deals with proceedings in cases of certain offences affecting the administration of justice. This chapter (secs. 476, 478, 479, 480, 482) has been expressly made applicable to Revenue Courts.

Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself,—a power of which such Courts were unintentionally deprived by section 472 of the Code of 1872.

Section 480 provides a procedure in certain cases of contempt—omission to produce documents, refusal to take an oath or affirmation, to answer questions, or to sign a statement, and intentional insult or interruption.

[1] See *In re Maltby*, L. R., 6 Q. B. D. 18.

Where the Local Government so directs, Sub-registrars will (sec. 483) be 'Civil Courts' within the meaning of the section. The position and qualifications of Sub-registrars vary in different provinces; but in some parts of India they are Natives of good family and education, well fitted for the exercise of the powers conferred by sections 480 and 482.

Section 486 gives an appeal to the High Court from a conviction in a contempt case by a Court of Small Causes in a Presidency-town.

Section 487 has been redrawn so as to avoid a difficulty which is felt in determining the meaning of the words 'offence committed in contempt of its own authority,' which occur in the corresponding section (473) of the Code of 1872.

Maintenance of wives and children.

Chapter XXXVI, as to the maintenance of wives and children, seems out of place in a Code of Criminal Procedure[1], and is here inserted only because corresponding provisions were placed in the Codes of 1861 and 1872. Sir Fitzjames Stephen[2] thinks that this chapter should be placed in Part IV, as to the Prevention of Offences, 'as,' says he, 'it is a mode of preventing vagrancy, or at least of preventing its consequences.' Unfortunately for this argument, though vagrancy is an offence in England, it is not, and never has been, an offence in India[3].

Habeas corpus.

Chapter XXXVII, as to directions of the nature of a *habeas corpus*, empowers the Presidency High Courts to suppress offences against personal liberty. They were first enacted in Act X of 1875, sec. 148. A somewhat similar jurisdiction is, as we have seen, given, by section 100, to Presidency Magistrates, Magistrates of the first class, and Subdivisional Magistrates, and in the case of certain females, by section 551 to Presidency Magistrates and District Magistrates.

IX.—Supplementary Provisions.

Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses, and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, etc.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings, and, lastly, certain miscellaneous matters.

[1] The Panjáb Chief Court has expressly ruled that an application for maintenance is not a complaint of an offence. The New York Cr. P. Code, §§ 914-926, treats the subject as a special proceeding of a criminal nature.

[2] Hist. Crim. Law, iii. 342.

[3] The European Vagrancy Act is the only Indian law dealing with vagrants; and this carefully abstains from treating vagrancy as a crime.

Public Prosecutor.

Chapter XXXVIII, Public Prosecutor.—No private person can conduct a prosecution without the permission of the Magistrate inquiring into or trying the case (sec. 495). This section, as amended by Act X of 1886, section 13, enables any such Magistrate to permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf, with the previous sanction of the Governor General in Council. But no officer of police is permitted to conduct the prosecution if he has taken any part in the investigation of the offence with respect to which the accused is being prosecuted. The entire exclusion of the police from such a function is, in the opinion of many authorities, inexpedient. With the limitations above described, there will be no fear of intimidation of witnesses or undue influence.

The Advocate General, Standing Counsel, Government Solicitor and any other officer empowered by the Local Government are exempted from the necessity of obtaining permission to conduct prosecutions.

Prosecutions before the Court of Session must (as we have seen) be conducted by a public prosecutor.

Bail.

Chapter XXXIX, Bail.—The Indian law on this subject is contained in the Code, chapter XXXIX, in the second schedule thereto, in Act XXI of 1879, sec. 17 (as to persons arrested in anticipation of extradition), and in special or local laws making certain offences bailable[1]. It states when bail may be taken in case of a non-bailable offence (sec. 497), declares that the amount of the bail bond shall not be excessive (sec. 498), provides for cases in which insufficient sureties have been accepted (sec. 501); and, lastly, deals with the discharge of sureties (sec. 502). The powers here given to police-officers have been expressly confined to officers in charge of police-stations.

Commissions.

Chapter XL, Commissions for Examination of Witnesses.—The Code, unlike the English criminal law, here provides for the taking of evidence on commission. Such commissions, as Straight J. has observed[2], should be issued only in extreme cases of delay, expense, or inconvenience[3]. The provisions of the former law have here been

[1] See, for instance, the Coroners Act, IV of 1871, sec. 27; the Customs Act, VIII of 1878, sec. 175; the Madras Salt Act, Mad. Act I of 1882, sec. 11; and Mad. Reg. I of 1830, sec. 4 (3), as to persons abetting a *sati*. See also 26 Geo. III. c. 57. sec. 16, as to taking bail in England in the case of persons accused of certain offences committed in India.

[2] 5 All. 92. So in New York the Courts have held that the power to issue a commission is an innovation of the common law, and must be strictly pursued.

[3] They were granted in 4 Cal. 20 and 6 Bom. 285; but refused in 8 Cal. 896, 5 All. 92, and 6 All. 224. As to Speakers' warrants for examination of witnesses in India, see 13 Geo. III. c. 63. sec. 42.

amended in four respects. Where the witness resides in a Native State, power has been given (sec. 503) to issue the commission to the Political Agent or other local officer representing the British Government. Section 505 requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission. Where a subordinate Magistrate wishes for a commission, he will (sec. 506) apply to the District Magistrate, and not (as formerly) to the Sessions Judge: this relieves the Court of Session of a duty which can be more conveniently performed by the District Magistrate. And power is expressly given (sec. 508) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

Special rules of evidence.

Chapter XLI contains some special rules as to evidence, supplementing those in the Evidence Act. The report of any Chemical Examiner or Assistant Chemical Examiner to Government may now be used in evidence (sec. 510) in any proceeding under the Code, not merely, as under the Code of 1872, in any criminal trial. And in proving a previous conviction or acquittal, the new Code (sec. 511) requires evidence as to identity of the accused person with the person so convicted or acquitted.

Bonds.

Chapter XLII contains some provisions generally applicable to bonds executed under the Code. The procedure for recovering the penalty from the principal in the case of security to keep the peace provided by Act X of 1872, sec. 502, is now applicable to all such bonds.

Disposal of property.

Chapter XLIII, Disposal of property. When an inquiry or trial is concluded, the Court is empowered (sec. 517) to make such order as it thinks fit for the disposal of any document or other property produced before it regarding which an offence appears to have been committed, or which has been used to commit an offence. In partial accordance with a rule of the High Court at Bombay, section 517 declares that, when a High Court or Court of Session makes such an order, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct the order to be carried into effect by the District Magistrate, not the 'committing Magistrate,' who might have been transferred before the order was made.

Orders under section 517 made in appealable cases will not (except where the property is live-stock, or is subject to speedy and natural decay) be carried out until the time allowed for appealing has expired, or, if an appeal is presented in due time, until the appeal is disposed of.

Where an innocent purchaser buys stolen property and restores it to the lawful possessor, provision is made (sec. 519) for payment

of the price out of money found on the convicted thief. This is in accordance with 30 & 31 Vic., cap. 35. sec. 10. But there is no provision, like 35 & 36 Vic., cap. 93. sec. 30, for the restitution of property which has been pawned with a pawnbroker.

Section 521 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272–275 of the same Code.

Power to restore immoveable property to any one dispossessed of it by criminal force, is conferred by section 522.

Transfer of criminal cases.

Chapter XLIV enables the High Court (sec. 526) and the Governor General in Council (sec. 527) to order any offence to be inquired into or tried by any court, otherwise competent, but not empowered under sections 177–184, and to transfer criminal cases from one Court to another. And section 528 empowers District and Subdivisional Magistrates to withdraw, recall, or refer such cases. Section 526 provides, in accordance with a minute of Sir B. Peacock, cited 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported (except where the applicant is the Advocate General) by affidavit or affirmation.

Irregular proceedings.

Chapter XLV contains provisions as to the cases in which irregularities shall, and in which they shall not, vitiate the proceeding in which they occur. Tender of pardon under Chapter XXVI, and sale of property under section 524 or section 525, have been added to the list of proceedings which will not be set aside merely on the ground of the Magistrate not being duly empowered.

Miscellaneous.

Chapter XLVI comprises some miscellaneous matters, of which the following were new. Power is given (sec. 541) to the Local Government to fix places of imprisonment or custody. Moneys (other than fines) payable by virtue of any order made under the Code will be recoverable as if they were fines (sec. 547). The power to compel restoration of abducted females, which formerly existed only in the Presidency-towns, has been extended (sec. 551) to District Magistrates. Power is given to the High Courts (sec. 553) to make rules for the inspection of the records of subordinate Courts. No Judge or Magistrate shall, except with permission of the Appellate Court, try or commit for trial any case to or in which he is a party or personally interested otherwise than as a municipal commissioner. Nor shall he hear an appeal from any judgment or order passed or made by himself (sec. 555). The Code contains no clause equivalent to Act I of 1868, sec. 5, as to

the recovery of fines, although similar provisions were contained in each of the Codes now consolidated (X of 1872, sec. 309, X of 1875, sec. 107, IV of 1877, sec. 12). The matter is now provided for by the Penal Code, sec. 64, amended by Act VIII of 1882, sec. 2.

SCHEDULES.

Schedules II (Tabular Statement of Offences) and V (Forms), which correspond respectively with Schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the provincial Courts, but to those of the Presidency Magistrates. The latter schedule now contains no less than 53 forms, which had, before their incorporation in the present Code, stood the test of practices in the Presidency of Madras and the Panjáb. The Code of 1872 contained only a set of forms of charges and nine forms of summonses, warrants, bonds, and the instruments improperly called recognisances.

The offence of voluntarily causing hurt has been made one for which the police may not arrest without a warrant. A like change has been made as to voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave it. The numerous investigations by the police into charges of 'hurt,' which the former law rendered necessary, distracted the attention of the police-force from more important duties, and resulted in little good to the public.

The offence of adultery has been made triable by a Presidency Magistrate and a Magistrate of the first class.

The paragraph relating to mischief by fire with intent to cause damage has been altered in accordance with the amendment of section 435 of the Penal Code by Act VIII of 1882, sec. 10. This alteration was made in order to check the offence, which was very common in some parts of the country, of setting fire to garnered crops. A cultivator might have the whole of his crop destroyed in this way, and yet if its value be less than Rs. 100 (as is often the case) he could not obtain the aid of the police to arrest the offender without a warrant from a Magistrate.

The lists of powers contained in section 21 et seq. of Act X of 1872 have been thrown into Schedules III (Ordinary Powers of Provincial Magistrates) and IV (Additional Powers with which Provincial Magistrates may be invested).

The Bill which afterwards became Act X of 1882 was published in the *Gazette of India* for the 5th, 12th and 19th April 1879, and circulated to the various Local Governments, with a request that

it might be examined by selected local officers. This was done, and the result of the examination is contained in a thick folio volume. The Bill was then revised with reference to this mass of criticism, and to the cases reported since it was framed; and it might almost be said, in the form in which it was referred to a Select Committee, to be the work of the whole body of Indian Judges and Magistrates rather than of any individual or Department.

Amendments made by Select Committee.

The Select Committee, which consisted of Mr. (now Sir Rivers) Thompson, the late Mr. Gibbs, Mr. H. Reynolds, Jotíndra Mohan Tagore, Mr. Louis Forbes, Mr. C. T. Crosthwaite, and the writer, made eighty-five amendments of the substance of the law; but of these only three are sufficiently important to require special mention here.

Examination of accused.

First, the Committee thought that the then law gave too great latitude to the Courts with regard to the examination of an accused person. The object of such examination is, or ought to be, to give the accused an opportunity of explaining any circumstances which may tend to criminate him, and thus to enable the Court, in cases where he is undefended, to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. The Committee therefore limited the power of interrogating the accused by prefixing to the first paragraph of section 342 the words 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' The accused should always have the opportunity of explaining, and the Code therefore requires the Court to question him generally for that purpose before he enters on his defence.

Whipping.

Secondly, the Committee amended the law as to whipping. It provided in section 32 that no Magistrate of the second class should pass a sentence of whipping unless specially empowered in that behalf by the Local Government: that whipping should be inflicted with a light ratan not less than half-an-inch in diameter; and that it should never be inflicted on any person whom the Court considered to be more than forty-five years of age.

Enhancement of sentences on appeals.

Thirdly, the Committee abolished the power, which Appellate Courts had under the Code of 1872, to enhance sentences on appeals presented by accused persons. The existence of such a power tended to deter convicted, but, possibly, innocent persons from presenting appeals, and thus to deprive the lower Courts of the control which could only be effectively exercised over them by means of an unhampered system of appeal.

Number of substantial

The Bill as introduced made a hundred and twelve amendments

of the substance of the law. The eighty-five amendments just mentioned or referred to raised the number to 197[1].

Amendments made by present Code.

The new Code became law on the 6th of March, 1882; but it did not come into force till 1st January, 1883,—ten years from the date on which the Code of 1872 began to operate. This was five years after the date on which, according to Sir Fitzjames Stephen, the Code should have been re-enacted. 'I should say,' he writes in his minute on the administration of justice in British India, 'that this process ought to be repeated at least once in every five years for every important Act.'

Excluding the special provisions of the Acts relating respectively to Coroners, criminal tribes, inquiries into the behaviour of public servants[2], and the organisation of the police, the Code is now a complete body of criminal procedure. It combines the merits of the English, or accusatory, system, with some of the facilities for arriving at the truth afforded by the continental, or inquisitorial, systems. No pains have been spared to render its provisions plain and practical; and though it has been thought necessary to pass three amending Acts, the principal changes made thereby are due rather to politico-sentimental considerations than to any difficulty which the Courts have found in working the Code.

Act III of 1884.

The so-called Ilbert Bill.

Of these Acts, the first (No. III of 1884) has already been noticed. The Bill as introduced (1) made the following persons, being Magistrates of the first class, eligible for the office of justice of the peace, viz. covenanted civilians, members of the Native Civil Service constituted under 33 Vic. c. 3, Assistant Commissioners in non-regulation provinces and Cantonment Magistrates, (2) made Sessions Judges and District Magistrates *ex officio* justices of the peace, (3) repealed in sec. 443 of the Code the words 'and an European British subject,' (4) repealed the provision in sec. 444 that no Judge presiding in a Court of Session should exercise jurisdiction over an European British subject unless he himself was an European British subject, (5) repealed sec. 450 and the last sixteen words of sec. 459. But the only important changes made by the Act as passed were the repeal of the section (450) which provided for the case where the Judge of the Sessions division within which a European British

[1] It is difficult, therefore, to understand how Sir Fitzjames Stephen could have written thus of the Code of 1882: 'It differs from the Act of 1872 principally in the circumstance that it does apply to the High Courts as well as the other criminal Courts in India, and that certain alterations have been made in the arrangement of the Act of 1872, besides *some few* alterations in its substance;' History of the Criminal Law, iii. 324.

[2] Act XXXVII of 1850. The New York Code of Criminal Procedure contains a Part (III) relating solely to this subject of judicial proceedings for the removal of public officers.

subject was ordinarily triable was a Native, and the substitution for section 451 of three sections enabling a European British subject—

(*a*) in a trial before the Sessions Court with the aid of assessors, to require that not less than half their number shall be Europeans or Americans, or both Europeans and Americans; and

(*b*) in a trial before a District Magistrate, to claim that the trial shall be by a jury similarly composed.

Act X of 1886.

The second of these Acts, No. X of 1886, amended the drafting of sections 31, 34, 110, 162, 266, 269, 398, 401 and 510. It extended sections 55 and 56 to the police in the towns of Calcutta and Bombay. It extended to Chief Presidency Magistrates the provisions as to endorsement in sections 88 and 514. It allowed the Local Government to regulate the practice of submitting final police reports through a superior officer of police. It also allowed the Local Government, with the previous sanction of the Governor General in Council, to prescribe the rank of the police officer who may conduct prosecutions. It empowered the Governor General in Council to direct criminal lunatics confined by order of the Local Government to be removed from one province to another. It empowered the Local Government to relieve the Inspector General of jails of his functions under sections 472, 473 and 474. It provided for the removal to a criminal jail of accused or convicted persons who are in confinement in a civil jail and their return to the civil jail. And it forbade officers concerned in sales under the Code to purchase or bid for the property sold. There is a corresponding section (292) in the Code of Civil Procedure. All these changes are improvements.

Act V of 1887.

The third Act, V of 1887, merely amends the definition of 'Officer in charge of a police station,' and in section 312 substitutes the word 'four' for the word 'two.' The object of the latter change is to increase the number of names in the special jurors' list in each Presidency-town. It is to be hoped that the result will not be to lessen seriously the number of respectable and intelligent persons available as common jurors.

Suggested amendments of the Code.

When the Code is next altered, it would be well to repeal and re-enact, as a separate law, the chapter on the maintenance of wives and children; to insert sections as to the mode of pleading the defences of want of jurisdiction, previous acquittal, previous conviction, and limitation; to alter the place of section 403; to make in sections 119, 145, 244, 350, 406, 437, and 443 the amendments above suggested; to explain and illustrate the expression 'presumed or actual partiality' in section 278; and to correct the clerical errors, mentioned infra, in sections 362, 551, and 552.

THE CODE OF CRIMINAL PROCEDURE, 1882.

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ACT No. X OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 6th March, 1882.)

AS AMENDED BY ACTS III OF 1884[1], X OF 1886, AND V OF 1887.

An Act to consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

CHAPTER I.

1. This Act may be called 'The Code of Criminal Procedure, 1882:' and shall come into force on the first day of January, 1883; Short title. Commencement.

It extends to the whole of British India[2]; but, in the absence of any specific provision to the contrary[3], nothing herein contained shall affect any special or local law now in force[4], Local extent.

[1] All references to the Code of 1882 made in enactments passed before or after 25th Jan. 1884 are to be read as if made to that Code as amended by Act III of 1884; see sec. 14 of that Act.

[2] 10 Bom. 258, and to the places outside British India mentioned infra in Appendix A. As to the personal application of the Code outside British India, see above, p. 5, 9 Bom. 288, 333, and sec. 458 infra.

[3] See secs. 54, 55, 56, 68, 83-86, 95, 102, 124, 374-376, and Schedule II, col. 3.

[4] e.g. Act XXXVII of 1855, which is still in force in the Santál Parganas, 12 Cal. 536.

or any special jurisdiction or power[1] conferred, or any special form of procedure prescribed[2], by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta[3], Madras and Bombay[3], or the police in the towns of Calcutta and Bombay;

(*b*) any officer duly authorised to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively[4];

(*c*) heads of villages in the Presidency of Fort St. George[5]; or

(*d*) village police-officers in the Presidency of Bombay[6]:

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras[7].

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications etc. under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately

[1] The power to punish contempts, vested in the High Courts, as superior Courts of record, by the common-law of England, seems saved by this provision, L. R., 10 Ind. App. 179, where, however, the point was not decided. The Lower Burma Gaols Delivery Act, XVI of 1886, is, so far as is consistent with the terms thereof, to be construed as one with the Code of Criminal Procedure.

[2] See, for example, Act V of 1869, the Indian Articles of War.

[3] See Ben. Act IV of 1866, Madras Act VIII of 1867, and (as to Bombay) Act XIII of 1856.

[4] See Bom. Act III of 1867 (*to make provision for the administration of Military Cantonments in the Bombay Presidency*). The old Regulation XXII of 1827, secs. 3, 22, 33, and Act IV of 1854 may still be in force in cantonments (if any) in which Bom. Act III of 1867 is not in force.

[5] See Mad. Regs. XI of 1816, secs. 10–14, and IV of 1821, sec. 6, under which Village-headmen have jurisdiction to try petty cases of assault, affray, abuse and theft, to search for stolen property, to hold inquests, and arrest suspected murderers.

[6] See Bom. Act VIII of 1867, Bom. Reg. XII. of 1827, sec. 37.

[7] The Coroners Act, IV of 1871, is therefore undisplaced. All the rest of the Code applies to the police in the town of Madras.

before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section. References to former Code and other repealed enactments.

In every enactment passed before this Code comes into force the expressions 'Officer exercising (or "having") the powers (or "the full powers") of a Magistrate,' 'Subordinate Magistrate, first class,' and 'Subordinate Magistrate, second class,' shall respectively be deemed to mean 'Magistrate of the first class,' 'Magistrate of the second class,' and 'Magistrate of the third class;' the expression 'Magistrate of a division of a district' shall be deemed to mean 'Sub-divisional Magistrate;' the expression 'Magistrate of the district' shall be deemed to mean 'District Magistrate,' and the expression 'Magistrate of Police' shall be deemed to mean 'Presidency Magistrate.' Expressions in former Acts.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:— Interpretation-clause.

(*a*) 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police-officer[1]; 'Complaint:'

(*b*) 'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorised by a Magistrate in this behalf[2]: 'Investigation:'

(*c*) 'Inquiry' includes every inquiry conducted under this Code by a Magistrate or Court: 'Inquiry:'

[1] nor a complaint to the police, 6 All. 96, nor information given to a police-officer.

[2] See sec. 202, infra.

'Judicial proceeding:'

(*d*) 'Judicial proceeding' means any proceeding in the course of which evidence is or may be legally[1] taken[2]:

'Writing' and 'written:'

(*e*) 'Writing' and 'written' include 'printing,' 'lithography,' 'photography,' 'engraving,' and every other mode in which words or figures can be expressed on paper or on any substance:

'Sub-division:'

(*f*) 'Sub-division' means a sub-division made under this Code of a District:

'Province:'

(*g*) 'Province' means the territories for the time being under the administration of any Local Government:

'Presidency-town:'

(*h*) 'Presidency-town' means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

'High Court:'

(*i*) 'High Court' means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

In other cases 'High Court' means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

'Chief Justice:'

(*j*) 'Chief Justice' includes also the senior Judge of a Chief Court:

'Advocate General:'

(*k*) 'Advocate General' includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

'Clerk of the Crown:'

(*l*) 'Clerk of the Crown' includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

'Public Prosecutor:'

(*m*) 'Public Prosecutor' means any person appointed under section 492[3], and includes any person acting under the directions of a Public Prosecutor; and any person conducting a

[1] See 1 All. 1, 7.

[2] This does not include the proceedings of a Magistrate under sec. 88, infra, 6 All. 487.

[3] See also sec. 270.

prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

(*n*) 'Pleader' used with reference to any proceeding in any Court, means a pleader authorised under any law for the time being in force[1] to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorised, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding: 'Pleader:'

(*o*) 'Police-station' means any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and 'Officer in charge of a police-station' includes, when the officer in charge of the police-station is absent from the station-house[2] or unable from illness to perform his duties, the police-officer present at the station-house[2] who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present: 'Police-station:' 'Officer in charge of a police-station:'

(*p*) 'Offence' means any act or omission made punishable by any law for the time being in force: 'Offence:'

(*q*) 'Cognisable offence' means any offence for, and 'cognisable case' means a case in, which a police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant: 'Cognisable offence:' 'Cognisable case:'

'Non-cognisable offence' means an offence for, and 'non-cognisable case' means a case in, which a police-officer, within or without the Presidency-towns, may not arrest without warrant: 'Non-cognisable offence:' 'Non-cognisable case:'

(*r*) 'Bailable offence' means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence: 'Bailable offence:' 'Non-bailable offence:'

(*s*) 'Warrant-case' means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months: 'Warrant-case:'

[1] See Act XVIII of 1879, amended by Act IX of 1884.

[2] Act V of 1887, sec. 1.

'Summons-case:' (*t*) 'Summons-case' means a case relating to an offence not so punishable:

'European British subject:' (*u*) 'European British subject' means—

(1) any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britian and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grandchild of any such person by legitimate descent:

'Chapter:' 'Schedule:' (*v*) 'Chapter' means a chapter of this Code; and 'Schedule' means a schedule hereto annexed:

'Place.' (*w*) 'Place' includes also a house, building, tent and vessel.

Words referring to acts. Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code[1].

Trial of offences under Penal Code. Trial of offences against other laws. 5. All offences under the Indian Penal Code[2] shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law[3] shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

[1] And of course all expressions, such as 'Magistrate,' 'Local Government,' defined in the General Clauses Act (vol. i. of this work, p. 487) and occurring in this Code, have the meaning ascribed to them by Act I of 1868.

[2] A contempt of the High Court of Calcutta, Madras, and Bombay by a libel published out of Court when the Court was not sitting is not included in these words, although the contempt may include defamation, L. R., 10 Ind. App. 179: 10 Cal. 109 (S. C.).

[3] These words do not include such a contempt, for which no provision is made by the Code.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts[1] and the Courts constituted under any law other than this Code for the time being in force[2], there shall be five classes of Criminal Courts in British India, namely:— Classes of Criminal Courts.

I.—Courts of Session:
II.—Courts of Presidency Magistrates:
III.—Courts of Magistrates of the first class:
IV.—Courts of Magistrates of the second class:
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

7. Every Province (excluding the Presidency-towns[3]) shall be a Sessions Division, or shall consist of Sessions Divisions: Sessions Divisions:

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts. Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts. Power to alter Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered. Existing Divisions and Districts.

Every Presidency-town[3] shall, for the purposes of this Code, be deemed to be a District. Presidency-towns.

8. The Local Government may divide any District outside the Presidency-towns[3] into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division. Power to sub-divide Districts.

[1] See sec. 4, cl. (*i*), supra. [2] See p. 6, supra. [3] Sec. 4, cl. (*h*), supra.

Existing Sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

Court of Session.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges [1], and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

Local limits of their jurisdiction.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

[1] 9 Bom. 164.

Such Magistrates shall be called Sub-divisional Magistrates[1].

The Local Government may delegate its powers under this section to the District Magistrate.

Delegation to District Magistrate.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as

Powers exercisable by Bench in absence of special direction.

[1] This includes Cantonment Magistrates, Act III of 1880, sec. 3.

practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class[1].

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session[2].

Subordination of Magistrates and Benches to District Magistrate; to Sub-divisional Magistrate.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate[3] to the District Magistrate[4], and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate[3] to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate[3] to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate[3] to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the

[1] That an appeal lies under sec. 407 from a conviction by a Bench invested with second or third class powers, see 9 Mad. 36.

[2] See Bombay Gazette, 1881, p. 9, cited by Henderson, pp. 17, 18.

[3] i. e. inferior in rank, 9 Bomb. 103.

[4] See the powers given to the District Magistrate by ss. 350, 406, 407, 435, 514, 515.

Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town[1] for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues[2]. Local limits of their jurisdiction.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877[3], was exercised in that town by the Court of Petty Sessions[4]: Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate— Chief Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns[1], Justices of the Peace for the Mufassal.

[1] Sec. 4, cl. (*h*), supra.

[2] Act XII of 1875.

[3] The day on which the Presidency Magistrates Act (IV of 1877) came into force.

[4] See p. 6, note 2, supra.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India[1]. Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving[2]; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

[1] 13 Geo. III, c. 63. sec. 38. [2] Inserted by Act III of 1884, sec. 1.

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government: **Suspension and removal of Judges and Magistrates.**

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it. **Suspension and removal of Justices of the Peace.**

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognisable by each Court.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session, or by any other Court[1] by which such offence is shown in the eighth column of the second schedule to be triable. **Offences under Penal Code.**

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court[2]. **Offences under other laws.**

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

[1] The provision as to the other Courts does not cut down or limit the jurisdiction of the High Court or Court of Session, 8 All. 667.

[2] See for example the Railway Act, IV of 1879, sec. 50, and the Registration Act, III of 1877 (amended by XII of 1879, sec. 106), sec. 83.

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death[1].

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorised by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge[2] may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation[3], passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:

Imprisonment[4] for a term not exceeding two years, including such solitary confinement as is authorised by law[5];

Fine not exceeding one thousand rupees;

Whipping.

[1] See 10 Cal. 85, and sec. 209 infra.

[2] See 9 Bom. 164, and chap. xxxii infra.

[3] Act X of 1886, sec. 1. Under the Penal Code, sec. 50, a sentence of seven years' imprisonment can be commuted to transportation for seven years.

[4] of either description as defined in the Penal Code; see the General Clauses Act, supra, vol. i. p. 489.

[5] See the Penal Code, secs. 73, 74.

(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

Power to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment[1] in default of payment of fine as is authorised by law in case of such default: provided that the term is not in excess of the Magistrate's powers under this Code[2]:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

But any sentence of imprisonment for a term exceeding

[1] but not transportation, 5 Mad. 28.

[2] See the Penal Code, sec. 65, and 10 Mad. 165.

four years[1], and any sentence of transportation, shall be subject to confirmation by the Sessions Judge[2].

Sentence in cases of conviction of several offences at one trial.

35. When a person is convicted, at one trial[3], of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence[4].

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their 'ordinary powers.'

[1] 6 Cal. 624.

[2] Act X of 1886, sec. 2.

[3] This section does not include the case of separate trials held on the same day for separate offences committed by the same person, Madras H. C. Progs., 5 June, 1879, cited by Henderson.

[4] 10 Bom. 494. A Magistrate must not split up an offence for the purpose of giving himself jurisdiction over the parts which he would not have had over the whole, and thus deprive the prisoner of an appeal, 4 Cal. 18.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Additional powers conferrible on Magistrates.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

Control of District Magistrate's investing power.

D.—Conferment, Continuance and Cancellation of Powers.

39. In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

Mode of conferring powers.

40. Whenever any person holding an office in the service of Government who has been invested[1] with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Continuance of powers of officers transferred.

41. The Local Government[2] may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

Powers may be cancelled.

[1] See 2 Cal. 117.

[2] Formerly District Magistrates had this power. But powers once conferred should not be lightly withdrawn, and the Select Committee deemed it expedient that District Magistrates should not be able to withdraw powers already conferred on their subordinates.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

42. Every person is bound [1] to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or police-officer is authorised to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray [2].

Aid to persons other than police, executing warrant.

43. When a warrant is directed to a person other than a police-officer [3], any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention [4]

[1] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 187.

[2] As to riots and affrays, see the Penal Code, secs. 146, 149. The law does not require persons to assist the police in extinguishing fires.

[3] See sec. 78, infra.

[4] For the punishment annexed to breach of this obligation, see the Penal Code, secs. 176, 202.

45. Every village-headman[1], village-watchman[2], village-police-officer[3], owner or occupier of land[4], and the agent[5] of any such owner or occupier, and every officer[6] employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station[7], whichever is the nearer, any information which he may obtain respecting—

Village-headmen, landholder and others to report certain matters.

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, any non-bailable offence in or near such village;

(*d*) the occurrence therein[8] of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section 'village' includes village-lands[9].

[1] See also Mad. Reg. XI of 1816, secs. 8, 9: Mad. Reg. I of 1830, sec. 3: the Forests Act, VII of 1878, sec. 78: Ben. Reg. XVII of 1829, sec. 3: the Criminal Tribes Act, XXVII of 1871, sec. 21: and (in Burma) Act II of 1880, secs. 14, 15.

[2] See also in the N. W. P., Act XVI of 1873, sec. 8: XVIII of 1876, sec. 34 (Oudh): and the Forests Act, VII of 1878, sec. 78: and the Criminal Tribes Act, XXVII of 1871, sec. 21.

[3] See in Bengal, Act V of 1861, secs. 21, 47: Ben. Act VI of 1870: in Madras, Act XXIV of 1869, sec. 1: in Bombay, Bom. Acts VII and VIII of 1867, and Bom. Reg. XII of 1827, sec. 37: in the N.W.P., Act XVI of 1873: in Oudh, Act XVIII of 1876.

[4] That residence in another's dwelling-house does not make the resident an 'occupier of land,' see 23 Suth.Cr.60.

[5] This does not include a khazánchí, but may include a díwán whose master is absent, 4 Cal. 603.

[6] whether he is, or is not, a native of India. The words do not include a village-accountant or a village-munsif's peon, 1 Mad. 266.

[7] Sec. 4 cl. (*o*), supra, p. 59.

[8] i. e. in the village referred to in cl. (*a*). That the finding of a human body in a village, under circumstances indicating that the death was sudden or unnatural, justifies the inference that the death took place 'therein,' and that in order to obtain a conviction under sec. 176 of the Penal Code the prosecution need not prove that the death actually took place 'therein,' see 11 Cal. 619, dissentiente Mitter J.

[9] Two of the High Courts have expressed an opinion that the provisions of this section should not be put in force against *A* where the police have actually obtained the requisite information from *B*, 4 Cal. 623: 7 Mad. 436.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action[1].

Resisting endeavour to arrest.

If such person forcibly resists[2] the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest[3].

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death[4], or with transportation for life[5].

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and

[1] Where the arrest is under a warrant, see sec. 80, infra.

The arrest may be made on any day and at any time—even on Sunday or at night.

[2] For the punishment annexed to such resistance see the Penal Code, secs. 224, 225.

[3] Thus a chaukídár may wound a fugitive housebreaker, if that amount of violence be necessary to secure his person. The question is, 'whether the means employed to stop the fugitive were such as an ordinarily prudent man would make use of, who had no intention of doing any serious injury,' 2 Suth. Cr. R. 9, per Glover J.

[4] See the Penal Code, secs. 121, 132, 194, 302, 303, 305, 307, 396.

[5] See the Penal Code, secs. 75, 121, 121 A, 122, 125, 125 A, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand[1] of admittance duly made, he cannot otherwise obtain admittance[2]:

Breaking open zanáná.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any police-officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein[3].

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape[4].

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him[5].

[1] *Launock* v. *Brown*, 2 B. & Ald. 592.

[2] As to breaking doors, see 3 Moore, I. A. 164, and Foster's Discourse on Homicide, cited ibid. 173, 174.

[3] *White* v. *Wiltshire*, Cró. Jac. 553: 2 Hawk. P. C. chap. xiv. sec. 11. The provisions of secs. 47, 48, 49 apply to a retaking after an escape or rescue: see sec. 67, infra.

[4] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 220, and the Police Act, V of 1861, sec. 29.

[5] See secs. 53 and 523, infra

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police-officer[1] may, without an order from a Magistrate and without a warrant, arrest—

first—any person who has been concerned in any cognisable offence[2] or against whom a reasonable complaint has been made, or credible information has been received[3], or a reasonable suspicion exists, of his having been so concerned[4];

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code[5] or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property[6] and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

[1] This does not include a village chaukídár, 3 All. 60.

[2] Sec. 4, cl. (*q*), supra.

[3] 10 Bom. 511.

[4] See also sec. 57 infra, and the Acts relating to Arms (XI of 1878, sec. 12); Cantonments (III of 1880, sec. 17); Criminal Tribes (XXVII of 1871, sec. 20); Cruelty to Animals (Ben. Act. III of 1869, sec. 1); Excise (Act XXII of 1881, sec. 27, and Ben. Act VII of 1878, secs. 40, 41); Gambling (Act III of 1867, sec. 13; Ben. Act II of 1867, sec. 11, etc.); Railways (Act IV of 1879, secs. 48, 49); Roads and streets (V of 1861, sec. 34); Salt (Ben. Act VII of 1864, sec. 24); Mad. Act I of 1882, sec. 4; Bom. Act VII of 1873).

[5] Sec. 87.

[6] Penal Code, sec. 415.

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service[1].

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, etc.

55. Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognisable offence[2]; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself[3]; or

(*c*) any person who is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

This section applies to the police in the towns of Calcutta and Bombay[4].

Procedure when police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

This section applies to the police in the towns of Calcutta and Bombay[4].

Refusal to give name and residence.

57. When any person in the presence of a police-officer commits or is accused of committing a non-cognisable offence[2], and refuses on demand of a police-officer to give his name

[1] See the Army Discipline and Regulation Act, 44 & 45 Vic., c. 58, secs. 154, 163 (1) (*i*), sch. 4. See also the Indian Articles of War, Act V of 1869.

[2] See sec. 4, cl. (*q*).

[3] As to the apprehension of lunatics, see Act XXXVI of 1858; of vagrants, IX of 1874, sec. 4.

[4] Act X of 1886, sec. 3.

and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, pursue such person into any place in British India[1].

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognisable offence[2], or who has been proclaimed as an offender[3];

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a police-officer; or, in the absence of a police-officer, take such person to the nearest police-station.

If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognisable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Person arrested to be taken before Magistrate or

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person

[1] As to arrests in a foreign country, see Act XXI of 1879.

[2] See sec. 4, clauses (*q*) and (*r*), supra.

[3] Where the Inland Emigration Act is in force, the employer, or any person acting on behalf of the employer, of a deserting labourer may arrest him without warrant or police assistance (Act I of 1882, sec. 172). Private persons may also arrest persons conveying arms etc. under suspicious circumstances, Act XI of 1878, sec. 12. Power to arrest is also given by special and local Acts to certain officers and employés connected with canals, customs, excise, forests, opium, railways, salt, and tramways.

arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

officer in charge of police-station.

61. No police-officer shall detain in custody a person arrested without warrant[1] for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

62. Officers in charge of police-stations[2] shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Discharge of person apprehended.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Power, on escape, to pursue and retake.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

[1] As to persons arrested under a warrant, see sec. 81.

[2] Sec. 4, cl. (*o*), supra.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing[1] in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct[2].

Summons by whom served.

Such summons shall be served by a police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay[3].

Summons how served.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons[4].

Signature of receipt for summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

[1] Sec. 4, cl. (*e*), supra, p. 58.

[2] As to the form of the summons, see 5 All. 8, per Straight J.

[3] As to Madras, see sec. 1.

[4] Merely showing the summons is not enough, 5 Bom. H. C., Cr. Ca. 10.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Service on servant of Government or of Railway Company.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of service in such cases, and when serving officer not present.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court[1].

Form of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time

Court may direct security to be taken.

[1] It need not be sealed by the presiding officer.

and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody[1].

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognisance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily[2] be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, etc.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge[3].

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

[1] In lieu of executing the bond, money or Government promissory notes may be deposited under sec. 513.

[2] 5 Bom. 274.

[3] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 187.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to police-officer.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant[1].

Notification of substance of warrant.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Person arrested to be brought before Court without delay.

82. A warrant of arrest may be executed at any place in British India.

Where warrant may be executed.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

84. When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police-officer for execution outside jurisdiction.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to

[1] The police-officer should therefore not attempt to arrest unless he has the warrant in his possession, 5 All. 318. As to the protection of a police-officer authorised by the warrant to arrest *A*, who arrests *B* in good faith believing him to be *A*, see the Penal Code, sec. 79. The same section protects a police-officer who without a warrant arrests *A*, believing in good faith that *A* has committed a cognisable offence, when in fact no such offence has been committed.

the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer is executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay[1].

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: provided that if the offence is bailable[2], and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond[3] to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded[4] or is concealing

[1] As to Madras, see sec. 1.
[2] Sec. 4, cl. (*r*), supra.
[3] See the form, Sched. V. No. 3.
[4] 4 Mad. 393.

himself so that such warrant cannot be executed, such Court may publish a written[1] proclamation[2] requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment[3] of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate or Chief Presidency Magistrate[4] within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

[1] Sec. 4, cl. (*e*).

[2] See the form, Sched. V. No. 4. For the punishment for not attending in obedience to the proclamation, see Penal Code, sec. 174.

[3] See forms, Sched. V. No. 6.

[4] Act X of 1886, sec. 4.

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit[1].

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government[2]; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to

[1] The law makes no provision for the Magistrate investigating the claims of third persons to property which has been attached. His proceedings under this section are, therefore, not 'judicial proceedings' in the sense of sec. 4, cl. (*d*). See 6 All. 487.

[2] 9 Cal. 863. So long as the attachment by the Magistrate continues, no title can be conferred by attachment and sale subsequently made in execution of a money-decree, ibid.

enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him [1].

D.—Other rules regarding processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant [2] for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded [3] or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in chap. vi generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

[1] Any Magistrate may order delivery, Sched. III. i. cl. (5).

[2] See form, Sched. V. No. 7.

[3] 4 Mad. 393.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station[1], considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124[2], or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

[1] Sec. 4, cl. (*o*), supra.

[2] which regulate the giving of evidence as to affairs of State and the disclosure of official communications. Persons summoned to produce documents do not become witnesses by merely producing them. See the Evidence Act, sec. 139.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained [1].

Nothing herein contained shall authorise any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities [2].

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant [3] the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, etc.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged docu-

[1] See sec. 101. [2] See secs. 101, 550 (*b*).
[3] See the form, Sched. V. No. 8.

ments, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorise any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant,

unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence[1], he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper[2].

D.—General provisions relating to searches.

Direction etc. of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84[3] shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all

[1] See the Penal Code, secs. 339, 340.

[2] For the power of the High Courts in Calcutta, Madras and Bombay to issue directions in the nature of a *habeas corpus*, see sec. 491, infra. For the powers of Presidency Magistrates and District Magistrates as to the liberation and restoration of females, see sec. 551.

[3] As to executing warrants of arrest.

things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Power to impound document.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant[1]

[1] See secs. 96–99, supra.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting[1], assault[2] or other breach of the peace, or of abetting[3] the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property[4], is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class[5],

and such Court is of opinion that it is necessary to require such person to execute a bond[6] for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix[7].

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void[8].

[1] Penal Code, sec. 146.

[2] Penal Code, sec. 351.

[3] Penal Code, sec. 107.

[4] See 2 All. 351.

[5] or a Bench of Magistrates, of which one is a Magistrate of the first class, sec. 15.

[6] See the form, Sched. V. No. 10. As to the period for which the security is required, see sec. 120.

[7] That a deposit of money or Government Promissory notes may be taken in lieu of the bond, see sec. 513. If the accused neither executes the bond nor makes the deposit, he may be imprisoned under sec. 123.

[8] N. W. P. 1875, p. 375.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information[1] that any person[2] is likely to commit a breach of the peace, or to do any wrongful[3] act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix[4].

Procedure of Magistrate etc. not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

[1] This must be 'clear and definite,' 'directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet,' 6 All. 30, per Straight Offg. C.J., and see ibid. 136. The report of a subordinate Magistrate or a police-officer may be 'information' for the purpose of this section, 2 Mad. H C. 240; though not for the purpose of sec. 118, 6 Bom. H. C., Cr. 1.

[2] residing within the local limits of his jurisdiction, 6 All. 28.

[3] 10 Bm. 441. A Magistrate cannot prevent *A* from exercising his rights of property because *B* would be likely to commit a breach of the peace if *A* did so.

[4] This section does not empower a Magistrate to issue process on persons not residing within the limits of his district. Where a Magistrate believes that certain persons resident beyond such limits are likely to break the peace within his district, he should have information of the fact laid before the Magistrate within whose district they reside, and have evidence in support thereof forthcoming, 11 Cal. 737.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information— Security for good behaviour from vagrants and suspected persons.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided[1], require such person to show cause why he should not be ordered to execute a bond[2], with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or a Magistrate[3] of the first class specially empowered in this behalf by the Local Government, receives information[4] that any person within the local limits of his jurisdiction is an habitual robber, housebreaker or thief[5], or an habitual receiver of stolen property knowing the same to have been stolen[6], or that he habitually commits extortion[7], or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury[8], Security for good behaviour from habitual offenders.

such Magistrate may, in manner hereinafter provided[1], require such person to show cause why he should not be ordered to execute a bond[9], with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix[10].

[1] Secs. 112–117; see 11 Cal. 13.

[2] For the form see Sched. V. No. 11.

[3] Act X of 1886, sec. 5.

[4] Conversations out of Court are not proper material for acting upon, 6 All. 132, per Straight J., and see 2 All. 835.

[5] See Penal Code, secs. 378, 390, 445.

[6] Penal Code, secs. 410, 411.

[7] Penal Code, sec. 383.

[8] Penal Code, sec. 385. The section does not, as it ought, apply to habitual protectors or harbourers of thieves, or to habitual aiders in the concealment or disposal of stolen property.

[9] See form, Sched. V. No. 11: 4 Mad. H. C. Rulings, xlvii. The amount of security should be such as to afford the person concerned a fair chance of complying with the order.

[10] The mere fact that a person from whom security is required has been previously convicted of offences against property does not justify proceedings under this section. There must be evidence that he has done some act indicating an intention to return to his former course of life, 10 Bom. 174: 12 Cal. 520.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874[1].

Order to be made.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received[2], the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class[3] of sureties (if any) required[4].

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him[5].

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons[6] requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person[7], the Magistrate may at any time issue a warrant for his arrest.

Copy of order under s. 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with per-

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon

[1] i.e. where they are persons of European extraction found asking for alms or wandering about without any visible means of subsistence, Act IX of 1874.

[2] 6 All. 214.

[3] e.g. landholders.

[4] These provisions are directory only, not imperative, 8 Cal. 724, per Field J.

[5] 14 Cal. 60, dissenting from 6 Cal. 291.

[6] See form, Sched. V. No. 12.

[7] 6 All. 138.

to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader[1]. sonal attendance

117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence[2] as may appear necessary. Inquiry as to truth of information.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases[3]; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases[4], except that no charge need be framed[5].

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise[6].

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly[7]: Order to give security.

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for

[1] Sec. 4, cl. (*n*), supra, p. 63; and as to when the Magistrate ought to allow appearance by a pleader, see 12 Cal. 133.

[2] 5 Bom. H. C., Cr. 105: 6 ibid. 1: 2 All. 835, per Straight J.: 12 Cal. 520.

[3] Infra, chap. XX, ss. 241–250, and see cases in Mayne, P. C. p. 296.

[4] Infra, chap. XXI, ss. 251–259.

[5] 6 All. 132. Before making an order directing security for good behaviour, the accused must be informed of the accusation which he has to meet and given an opportunity of entering upon his defence, 11 Cal. 13.

[6] The mere record of previous convictions on account of which he has undergone punishment does not satisfy the requirements of secs. 110, 117 and 118; 10 Bom. 174.

[7] As to appeals against this order, see sec. 406 infra, and 9 Cal. 878.

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a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive[1]:

thirdly—that when the person in respect of whom the inquiry is made is a minor[2], the bond shall be executed only by his sureties.

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment[3] of, any offence punishable with imprisonment[4], wherever it may be committed, is a breach of the bond[5].

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that,

[1] 2 Cal. 384: 6 Cal. 14: 4 Mad. H. C. Rulings, xlvii. The amount should be such as to afford the person against whom the order is made a fair chance of complying with it.

[2] Act IX of 1875.

[3] Penal Code, sec. 107.

[4] See vol. i. of this work, pp. 25, 26.

[5] As to the procedure thereon, see sec. 514 infra.

for reasons[1] to be recorded by the Magistrate, such surety is an unfit person.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained. Imprisonment in default of security.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant[2] directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court. Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit[3]: provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Imprisonment for failure to give security for keeping the peace shall be simple. Kind of imprisonment.

Imprisonment for failure to give security for good behaviour may be rigorous[4] or simple as the Court or Magistrate in each case directs[5].

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for Power to release persons im-

[1] The ground of refusal must be valid and reasonable, 22 Suth. Cr. 37.

[2] See the forms, Sched. V. Nos. 13, 14.

[3] There is no appeal from an order made by a District Magistrate under this section and, on reference by the Magistrate, confirmed by the Sessions Judge, 9 Cal. 878.

[4] Penal Code, sec. 53.

[5] As to the removal of persons detained in prison under this section see the section substituted by Act X. of 1886, sec. 25, for sec. 32 of the Prisoners' Act, 1871.

prisoned or failing to give security.

failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged [1].

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court [2], as the case may be, and such Court may, if it thinks fit, order such person to be discharged [1].

District Magistrate may cancel bond for keeping the peace.

125. The District Magistrate [3] may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction [4].

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

[1] See form of warrant to discharge, Sched. V. No. 115.

[2] Sec. 4, cl. (*i*).

[3] No other Magistrate can do so, sec. 530, cl. (*f*).

[4] He cannot now exercise such power in the case of bonds executed without his local limits.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

127. Any Magistrate or officer in charge of a police-station[1] may command any unlawful assembly[2], or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or police-officer.

This section applies to the police in the towns of Calcutta and Bombay.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the Presidency-towns[3], may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be

Duty of officer commanding troops required by Magistrate to disperse assembly.

[1] or a police officer superior in rank to an officer in charge of a police station, 7 Bom. 42.

[2] Penal Code, sec. 142.

[3] Sec. 4, cl. (h).

necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of Commissioned Military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, military officer, police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(*a*) no Magistrate or police-officer acting under this chapter in good faith[1],

(*b*) no officer acting under section 131 in good faith[1],

(*c*) no person doing any act in good faith[1] in compliance with a requisition under section 126 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

[1] i. e. with due care and attention, Penal Code, sec. 52, supra, vol. i. p. 103. note 5.

CHAPTER X.

PUBLIC NUISANCES[1].

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class[2], considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public[3], or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort[4] of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order[5] requiring the person[6] causing such obstruction or nuisance, or carrying on

[1] The powers given by secs. 133–137, with regard to the obstruction of public ways, are not to be exercised where there is a *bonâ fide* dispute as to the existence of the public right. Where there is such a dispute, no order can be made under these sections until the public right has been established by proper legal proceedings, civil or criminal, 11 Calc. 8. As to the judicial inquiry necessary under sec. 133, see 11 Cal. 271.

[2] Not Presidency Magistrates, who deal with nuisances under the Penal Code and local Acts.

[3] Obstructions of private paths and drains can only be dealt with by civil suits, 2 Suth. Cr. 36: 5 Suth. Cr. 58.

[4] as distinguished from religious or sentimental gratification: as to this see 2 Bom. 457.

[5] See form, Sched. V. No. 16. No unconditional order can be made under this section, 9 Cal. 637.

[6] This includes a company, Penal Code, sec. 11: General Clauses Act, sec. 2, cl. (2), supra, vol. i. pp. 94, 487.

such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank[1], well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided[2].

No order duly made by a Magistrate under this section shall be called in question in any Civil Court[3].

Explanation.—A 'public place' includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct[4], and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person ordered must obey, or show cause or claim jury.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

[1] As to filling up or deepening tanks which have become a public nuisance, see 10 Suth. Cr. 27, 51.

[2] 9 Cal. 637.

[3] 3 Ben. Appx. 43.

[4] e. g. by beat of drum.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code[1]; and the order shall be made absolute.

Consequence of his failing to do so.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case[2].

If the Magistrate is not so satisfied, the order shall be made absolute[3].

Procedure where he appears to show cause.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury[4] consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate[5], and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict[6].

Procedure where he claims jury.

139. If the jury or a majority of the jurors[7] find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Procedure where jury finds Magistrate's order to be reasonable.

140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was

Procedure on order being made absolute.

[1] But see sec. 195, cl. (*b*) infra, and sec. 487 infra.

[2] and the High Court does not interfere as a Court of revision, 8 Cal. 883.

[3] provided he has taken evidence as a basis for the order, 11 Bom. 375.

[4] See form of order constituting the jury, Sched. V. No. 117.

[5] in the exercise of a sound discretion, 21 Suth. Cr. 43.

[6] This time may be extended under section 141. If one of the jurors declines to act, the Magistrate should appoint another jury and commence inquiry afresh, 11 Cal. 84. And when a minority of the jurors do not act the Magistrate cannot proceed upon a report submitted by the majority. But he may then act under sec. 141; 13 Cal. 275.

[7] after due deliberation amongst themselves, 13 Cal. 275.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself[1] or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof[2]; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land etc. is likely to cause breach of peace.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute[3] likely[4] to cause a breach of the peace[5] exists concerning any tangible immoveable property[6], or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied[7], and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession[8] of the subject of dispute.

[1] 13 Suth. Cr. 72, col. 1.

[2] To obtain a perpetual injunction recourse must be had to the Civil Courts.

[3] There must be a substantial dispute (not a mere discussion or verbal altercation, 5 Cal. 197) between parties who have each some semblance of right or supposed right, 6 Cal. 841 (on sec. 530 of the Code of 1872).

[4] Mere probability is not enough, 7 Cal. 385.

[5] There must be a reasonable apprehension that a disturbance of the peace is likely to occur rendering it necessary that the Magistrate should take immediate steps to prevent it (7 Calc. 385), and he must be satisfied that the suggestion of this apprehension is not merely colourable, made to induce him to deal with matters properly cognisable by the civil courts, 10 Cal. 78.

[6] The Calcutta High Court has held that a dispute as to the right to collect rent from ryots is such a dispute, 11 Cal. 413, but not one relating to a right to fish in a *jalkar*, 12 Cal. 539: 13 Cal. 179. The former ruling seems erroneous.

[7] 13 Cal. 175.

[8] i. e. the possession, however ob-

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence[1] produced by them respectively, consider the effect of such evidence, take such further evidence[1] (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then[2] in such possession of the said subject.

Inquiry as to possession.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order[3] declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction[4].

Party in possession to retain possession until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed[5].

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it[6] until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace[7] exists concerning the right to do or prevent the doing of anything in

Disputes concerning easements, etc.

tained, of the party in possession at the time of the inquiry, 12 Cal. 521. The 'possession' under the Code of 1872 did not include occupancy by a trespasser, 6 Mad. H. C. Rulings, xiii (on c. 22 of old Code). As to possession, see vol. i. of this work, p. 56.

[1] on oath or affirmation, 7 Ben. 322. The Magistrate may summon witnesses in cases under this section, sec. 540 infra.

[2] 11 Cal. 373. As to questions of title, 14 Cal. 169.

[3] See form, Sched. V. No. 22.

[4] Where the property is not cultivated in consequence of the order, and the plaintiff sued for damages for loss caused by the non-cultivation, see 6 Mad. 426.

[5] Proceedings under this section should, on all points of procedure, be regarded as summons-cases, 11 Cal. 762. As to the costs, see infra, sec. 148, par. 3.

[6] See the form of the warrant of attachment. Sched. V. No. 23.

[7] 5 Cal. 194.

or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order[1] permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be[2].

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

[1] See form, Sched. V. No. 24.

[2] That the magistrate cannot make a purely declaratory order under this section, see 5 Cal. 194. The burden of proof lies on the party alleging a right to prevent another from exercising ordinary proprietary rights over his own land, 11 Cal. 52. As to the lawful use of a public way, 7 Mad. 51.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognisable offence[1]. Police to prevent cognisable offences.

150. Every police-officer receiving information of a design to commit any cognisable offence[1] shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence. Information of design to commit such offences.

151. A police-officer knowing of a design to commit any cognisable offence[1] may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented[2]. Arrest to prevent such offences.

152. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation. Prevention of injury to public property.

153. Any officer in charge of a police-station[3] may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false. Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction[4].

[1] i. e. any offence for which he may arrest without warrant.

[2] As to reporting such arrests, see sec. 62, supra.

[3] Sec. 4, cl. (*q*), supra.

[4] This section does not apply to the police in Calcutta or Bombay: see for their powers as to weights and measures in Calcutta, Ben. Act IV of 1866, sec. 56. in Bombay, Bom. Act IV of 1882.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognisable cases.

154. Every information relating to the commission of a cognisable offence[1], if given orally to an officer in charge of a police-station[2], shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed[3] by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in non-cognisable cases.

155. When information is given to an officer in charge of a police-station[2] of the commission within the limits of such station of a non-cognisable offence[1], he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognisable cases.

No police-officer shall investigate a non-cognisable case[1] without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any police-officer receiving such order may exercise the same powers[4] in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station[2] may exercise in a cognisable case[5].

Investigation into cognisable cases.

156. Any officer in charge of a police-station[2] may, without the order of a Magistrate, investigate any cognisable case[5] which a Court having jurisdiction over the local area within

[1] See sec. 4, cl. (*q*), supra.

[2] Sec. 4, cl. (*o*).

[3] This would no doubt include 'marked' in the case of a person unable to write.

[4] See sec. 156.

[5] i.e. a case in which a police-officer may arrest without warrant.

the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

157. If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognisance of such offence upon a police report[1], and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Procedure where cognisable offence suspected.

Provided as follows:—

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where local investigation dispensed with.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where police-officer in charge sees no sufficient ground for investigation.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

[1] See sec. 191, infra.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation[1] or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Police-officer's power to require attendance of witnesses.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person[2] being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required[3].

Examination of witnesses by police.

161. Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly[4] all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture[5].

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration[6], made by any person to a police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or shall[7] be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

No inducement to be offered.

163. No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement,

[1] Sec. 4, cl. (*b*).

[2] other than the accused, who may be arrested at any time, if necessary, without a warrant. The intention of the section is only to provide an easy means of obtaining evidence, 7 Mad. 275.

[3] And if he disobeys he is punishable under the Penal Code, sec. 174.

[4] See 7 Cal. 121. If he knowingly answers falsely he is punishable under the Penal Code, sec. 193. See 8 Bom. 216: 10 Cal. 405.

[5] A witness, therefore, who makes a false statement to a police-officer in reply to a question which he is bound to answer is guilty of intentionally giving false evidence (Penal Code, sec. 193): the law on this subject laid down by the High Court (7 Cal. 121) was intentionally altered by the legislature, 10 Cal. 406.

[6] 8 Cal. 211.

[7] Act X of 1886, sec. 6.

threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24[1].

But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will[2].

Power to record statements and confessions.

164. Any Magistrate not being a police-officer[3] may record any statement or confession made to him[4] in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded[5] in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case[6]. Such confessions shall be recorded[5] and signed[7] in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning[8] the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

'I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him[9].

'(*Signed*) A. B.,

'*Magistrate*[10].'

Search by police-officer.

165. Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the

[1] 10 Cal. 776, when the Magistrate had said to the prisoner that he had better tell the truth. See infra.

[2] As to confessions to police-officers see the Evidence Act, infra, secs. 26–28.

[3] 1 Cal. 207: 4 Mad. H. C. Rulings, iii: 7 Mad. 287.

[4] whether by the accused or by a witness, 2 Bom. 643.

[5] Where the statement or confession is made in a language other than the language of the Court, it is recorded in the language in which the interpreter conveys it to the Court, 5 Cal. 826.

[6] 3 All. 338.

[7] But refusal to sign is not punishable under the Penal Code, sec. 180; 4 Bom. 15.

[8] as to whether or not the confession was made voluntarily: see 10 Bom. H. C. 175.

[9] 1 Bom. 219.

[10] As to confessions in India and the circumstances under which they are made and retracted, see 6 All. 550, per Duthoit J.

production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section[1].

When officer in charge of police-station may require another to issue search-warrant.

166. An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well founded, the officer in charge of

[1] As to searches for contraband salt, see Ben. Act VII of 1864, sec. 28: Mad. Act I of 1882, secs. 21, 23. Bom. Act VII of 1873, sec. 8, and the Salt Act, XII of 1882, secs. 15, 18.

the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond[1], with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognisance of the offence on a police report[2] and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognisance of the offence upon a police

[1] For the form of the bond, see Sched. V. No. 25; as to making a deposit in lieu of executing this bond, see infra, sec 513.

[2] Sec. 191, infra.

report and to try the accused or commit him for trial[1]; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond[2] to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants etc. not to be required to accompany police, nor subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond[3]:

Recusant complainant or wit-

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him

[1] Sec. 191, infra. [2] See the form, Sched. V. No. 26.
[3] See Penal Code, sec. 166.

under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

ness may be forwarded in custody.

172. Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory[1], or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognisance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Report of police-officer.

Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the Local Government by general or special order so directs[2], be submitted through that officer, and he may, pending the orders of the

[1] 9 Cal. 455. But the prisoner cannot require that the police-officer shall for this purpose refer to a memorandum made by him, 8 Cal. 154.

[2] Act X of 1886, sec. 6.

Magistrate, direct the officer in charge of the police-station to make further investigation[1].

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide etc.

174. Every officer in charge of a police-station, on receiving information[2] that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

[1] Act X of 1886, sec. 6.

[2] Sec. 45, supra, p. 77.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorised to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate[1].

Power to summon persons.

175. An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend[2] and to answer truly[3] all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognisable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court[1].

Inquiry by Magistrate into cause of death.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case[4].

Power to disinter corpse.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined[1].

[1] This section does not apply to the Police in Madras, sec. 1, cl. (*e*), supra.

[2] See Penal Code, sec. 174.

[3] See Penal Code, secs. 179, 193, and 8 Bom. 216, 10 Cal. 405.

[4] But he need not draw up a report and submit it to the District Magistrate, 3 Cal. 742; and such a report, if made, is not part of a judicial proceeding.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done[1], and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) *A* is wounded within the local limits of the jurisdiction of Court *X*, and dies within the local limits of the jurisdiction of Court *Z*. The offence of the culpable homicide[2] of *A* may be inquired into or tried either by *X* or *Z*.

(*b*) *A* is wounded within the local limits of the jurisdiction of Court *X*, and is during ten days within the local limits of the jurisdiction of Court *Y*, and during ten days more within

[1] or omitted, see sec. 4, cl. (*w*), supra, p. 64. [2] Penal Code, sec. 299.

the local limits of the jurisdiction of Court *Z*, unable in the local limits of the jurisdiction of either Court *Y* or Court *Z* to follow his ordinary pursuits. The offence of causing grievous hurt[1] to *A* may be inquired into or tried by *X*, *Y* or *Z*.

(*c*) *A* is put in fear of injury within the local limits of the jurisdiction of Court *X*, and is thereby induced, within the local limits of the jurisdiction of Court *Y*, to deliver property to the person who put him in fear. The offence of extortion[2] committed on *A* may be inquired into or tried either by *X* or *Y*.

Place of trial where act is offence by reason of relation to other offence.

180. When an act[3] is an offence by reason of its relation to any other act[3] which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment[4] may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed[5].

(*b*) A charge of receiving or retaining stolen goods[6] may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped[7] may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits,

181. The offence of being a thug[8], of being a thug and committing murder, of dacoity[9], of dacoity with murder[10], of having belonged to a gang of dacoits[11], or of having

[1] Penal Code, sec. 320.

[2] Ibid., sec. 383.

[3] or omission, sec. 4, cl. (*w*), supra, p. 64.

[4] Penal Code, secs. 107, 108.

[5] But where a foreign subject resident in foreign territory instigated in that territory the commission of an offence, which was in consequence committed in British India, it was held that he was not amenable to the jurisdiction of a British Court established under this Code, 10 Bom. H. C. 356; and see further as to the want of jurisdiction over foreigners in respect of offences committed out of British India, 4 Bom. H. C., Cr. Ca. 38: 10 Bom. 186: 1 Mad. 171: 5 Mad. 23. As to such offences committed by subjects of Her Majesty, see sec. 188, infra.

[6] Penal Code, sec. 410, as amended by Act VIII of 1882, sec. 4. See 10 Bom. 186.

[7] Penal Code, sec. 368.

[8] Ibid., secs. 310, 311.

[9] Ibid., sec. 391.

[10] Ibid., sec. 396.

[11] Ibid., sec. 400.

escaped from custody, etc.

escaped from custody[1], may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation[2] or of criminal breach of trust[3] may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing,

The offence of stealing anything[4] may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain, or not in one district only; or where offence is continuing, or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one[5], and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage[6].

Offences against Railway,

184. All offences against the provisions of any law for the time being in force relating to Railways[7], Telegraphs[8], the

[1] Penal Code, sec. 224.

[2] Ibid., secs. 403, 404.

[3] Ibid., secs. 405-409.

[4] Ibid, sec. 378.

[5] The Madras High Court has held that an offence is not a 'continuing one' unless a British Indian Court has jurisdiction at the place of the inception of the offence, Mad. H. C. Pro., 31 Oct. 1876, cited by Henderson, p. 162.

[6] See as to the former law on this subject, 25 Suth. Cr. 45 : 1 Mad. H. C. 193 : 13 Ben. Appx. 4.

[7] Act IV of 1879.

[8] Act I of 1876.

Post-office[1] or Arms and Ammunition[2] may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Telegraph, Post-office and Arms Acts.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

In British Burma, when the offender is an European British subject[3], the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him[4], and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before

[1] Act XIV of 1866.
[2] Act XI of 1878.
[3] Sec. 4, cl. (*u*).
[4] That he may issue process from a place in foreign territory, see 1 Bom. 340.

whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject[1] commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject[2] of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence

[1] Sec. 4, cl. (*u*).

[2] i.e. a subject of Her Majesty born or naturalised in India and not coming within the second clause of the definition of 'European British subject,' sec. 4, cl. (*u*). Merely owning land in British India and occasionally residing in British India does not make one 'a Native Indian subject,' Panjáb Record, 1885, p. 1, cited by Henderson, p. 165. For cases in which a Native was tried under the corresponding sections of Acts XI of 1872 and XXV of 1879, see 6 Bom. 622: 2 All. 218.

if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions and exhibits to be received in evidence.

190. In sections 188 and 189 the expression 'Political Agent' means and includes—

'Political Agent' defined.

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent, under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognisance of[1] any offence—

Cognisance of offences by Magistrates.

(*a*) upon receiving a complaint[2] of facts which constitute such offence;

(*b*) upon a police-report of such facts;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge[3] or suspicion, that such offence has been committed[4].

[1] This, of course, does not make it optional with the Magistrate to hear a complainant, 13 Cal. 334.

[2] Sec. 4, cl. (*a*), supra, p. 61.

[3] A belief founded on private and anonymous information is not 'knowledge,' 4 Ben. Appx. 1.

[4] 5 Ben. 274: 4 Cal. 712.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognisance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognisance under clause (*c*) of offences for which he may try or commit for trial.

When a Magistrate takes cognisance of an offence under clause (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session[1].

Transfer of cases by Magistrates.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognisance, for inquiry[2] or trial to any Magistrate subordinate[3] to him[4].

Any District Magistrate may empower any Magistrate of the first class who has taken cognisance of any case, to transfer it for inquiry[2] or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognisance of offences by Courts Session.

193. Except as otherwise expressly provided by this Code[5] or by any other law for the time being in force, no Court of Session shall take cognisance of any offence as a Court of original jurisdiction, unless the accused has been committed[6] to it by a Magistrate duly empowered in that behalf[7].

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial[8].

[1] Added by Act III of 1884, sec. 2.

[2] Not preliminary inquiry, 4 Mad. H. C. Appx. xl.

[3] See sec. 17, supra.

[4] As to withdrawing or recalling cases so transferred, see sec. 528, infra.

[5] See secs. 477, 480, 485.

[6] 13 Suth. Cr. 17, col. 1: 4 Bom. H. C., Cr. Ca. 35. As to the presumption that the commitment has been duly made, see the Evidence Act, sec. 141, cl. (*e*).

[7] The object of this restriction is to secure to the prisoner a preliminary inquiry, which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence, 3 Mad. 351.

[8] Applications under chap. xxxii.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

by Assistant Sessions Judges.

194. The High Court may take cognisance of any offence upon a commitment made to it in manner hereinafter provided.

Cognisance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognisance—

(*a*) of any offence punishable under sections 172 to 188[1] (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned[2], or of some public servant to whom he is subordinate;

Prosecution for contempts of lawful authority of public servants.

(*b*) of any offence punishable under section 193[3], 194, 195[4], 196, 199, 200, 205, 206, 207, 208, 209, 210, 211[5] or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate[6].

Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person[7]; but it shall, so far as practicable, specify the Court or other place in

Nature of sanction necessary

cannot therefore be referred to a Joint Sessions Judge, 9 Bom. 354.

[1] As to the offence punishable under the Penal Code, sec. 185, see 7 N. W. P. 132.

[2] These words must be read in connection with sec. 476. Where a *Court* is acting under sec. 195 a complaint in the strict sense of the Code is not required, 7 All. 871. A complaint directly made by the public servant is quite as sufficient as his sanction. See 13 Cal. 270, dissenting from 5 All. 36.

[3] 6 Mad. H. C. 92: 6 Suth. Cr. 11: 11 Suth. Cr. 17. Sanction is not necessary before instituting a charge under sec. 82 of the Registration Act, 11 Cal. 566.

[4] 6 All. 101.

[5] 6 All. 114.

[6] In this clause 'Court' includes a sub-registrar acting under sec. 41 of the Registration Act, 1877, 10 Mad. 154.

[7] Marsh. 270: 7 Mad. 224.

which, and the occasion on which, the offence was committed[1].

When sanction is given in respect of any offence referred to in this section, the Court taking cognisance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate[2]; and no such sanction shall remain in force for more than six months from the date on which it was given[3].

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie[4].

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Prosecution for State-

196. No Court shall take cognisance of any offence punishable under Chapter VI of the Indian Penal Code, except

[1] 11 Bom. H. C. 34. As to the object of the sanction, see 16 Suth. Cr. 37. It ought always to be in writing and attached to the record; but it may be oral, and in one case (5 Bom. H. C., Cr. Ca. 38) it was implied. Before granting the sanction the Court must satisfy itself that an offence has been committed, 7 Mad. 562; but it need not hold an inquiry as to all the persons implicated, 7 Mad. 224. See, too, sec. 476 infra, and 6 All. 98, 101. The Court granting the sanction should specify the section of the Penal Code under which proceedings are to be instituted, 6 All. 106. A sanction applied for after the termination of the proceedings in the course of which the offence is alleged to have been committed ought not to be granted unless the alleged offender had had notice of the application and an opportunity of being heard, 10 Cal. 1100.

Under sec. 537 infra no finding etc. can be reversed or altered on appeal or revision on the ground that the sanction has not been given, unless there has been a failure of justice. Objections to jurisdiction on the ground of want of sanction should apparently be taken at the trial, 7 Mad. H. C. 58, per Holloway J.

[2] Sec. 439, infra; see 22 Suth. Cr. 11: 7 Mad. 314.

[3] This means that a Magistrate shall not take cognisance of a case under a sanction which is more than six months old, not that the whole prosecution shall be completed within that period, 6 All. 45. The Court which granted a sanction which has expired by efflux of time may grant a fresh sanction, 6 All. 45.

[4] A District Judge has therefore power to revoke or grant a sanction granted or refused by a Subordinate Judge, 7 Mad. 314. That an unsuccessful application for sanction may be no ground for a suit for malicious prosecution, see 9 All. 59.

section 127, or punishable under section 294 A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf[1].

offences, or keeping a lottery.

197. When any Judge[2], or any public servant[3] not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence[4], no Court shall take cognisance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Prosecution of Judges and public servants.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held[5].

Power of Government as to prosecution.

198. No Court shall take cognisance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Breach of contract, defamation and offences against marriage.

199. No Court shall take cognisance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman[6], or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Adultery or enticing a married woman.

[1] See as to sec. 294 A, *British Burma Gazette*, 19 June, 1878.

[2] See Penal Code, sec. 19.

[3] See Penal Code, sec. 21. A municipal corporation is not a public servant within the meaning of this section, 3 Cal. 758.

[4] 2 Bom. 481: 7 Bom. H. C., Cr. Ca. 61, and a Court has no jurisdiction to entertain a charge against such judge or public servant if preferred otherwise than in accordance with such determination and specification, 9 Mad. 439, 8 Bom. H. C., Cr. Ca. 32, where a judge was charged with using defamatory language to a witness during the trial of a suit.

[5] The sanction of the Governor General in Council is required to prosecutions for acts purporting to be done under chapter ix. of this Code. See sec. 132.

[6] 24 Suth. Cr. 19: 5 All. 233. He must, even though he be a minor, make the complaint himself, unless he be absent.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES[1].

Examination of complainant.

200. A Magistrate taking cognisance of an offence on complaint shall at once examine the complainant upon oath[2], and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognisance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognisance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Postponement of issue of process.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorise in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognisance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either

[1] Secs. 200–209 should be read together, 14 Cal. 141.

[2] so as to enable the Magistrate to exercise his judgment as to whether there is or not sufficient ground for proceeding.

inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint[1].

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay[2].

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint[3] if, after examining the complainant[4] and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding[5].

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

204. If, in the opinion of a Magistrate taking cognisance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he[6] shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction[7].

[1] He cannot give such direction after evidence has been taken for the complainant and process issued, 9 Mad. 282.

[2] As to Madras, see sec. 1.

[3] This dismissal does not amount to an acquittal for the purposes of sec. 403; see the explanation to that section.

[4] and recording his examination, 3 Ben. App. Jur. Cr. 53.

[5] This section should have provided for recording the magistrate's reasons for the dismissal and thus enabling the High Court, in exercising its revisional powers, to consider whether his discretion has been properly exercised. See 14 Cal. 140.

[6] 10 Ben. Appx. 26.

[7] As to process to compel the appearance of an European British subject accused of an offence, see sec. 445, proviso.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendence of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do[1], dispense with the personal attendance of the accused, and permit him to appear by his pleader[2].

But the Magistrate inquiring into or trying the case[3] may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court[4].

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence

[1] As, for instance, when the offence charged is bailable. As to taking a bond binding the accused to appear, see 5 Bom. H. C., Cr. Ca. 64.

[2] Where the accused is a *pardah-nashin* woman her personal attendance should be dispensed with until the Magistrate is satisfied that she has a real charge to answer, 6 All. 59; and see 1 Ben. Short Notes, v, as to such women giving evidence in pálkís.

[3] not the Magistrate issuing the summons.

[4] 2 Suth. Cr. 50. Powers conferred under this section convey authority to carry into effect any of the provisions of chap. xviii, 6 All. 477.

as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate [1].

If the complainant or officer conducting the prosecution [2], or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Process for production of further evidence.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him [3], such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial [4], discharge [5] him, unless it appears to the Magistrate that such person should be tried before himself [6] or some other Magistrate, in which case he shall proceed accordingly.

When accused person to be discharged.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial [7], he shall frame a charge [8] under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

As soon as the charge has been framed, it shall be read and

Charge to be ex-

[1] As to remands, see 11 Ben. Appx. 18: 6 Mad. 63, 69: and sec. 344, infra.

[2] As to the duty of the prosecution to call witnesses, see 8 Cal. 121: 10 Cal. 1070.

[3] Sec. 342 infra, and see 1 Ben. S. N. xvi.

[4] 5 All. 161, per Mahmúd J.

[5] As to the effect of a discharge, see 6 Bom. 376 (suit for malicious prosecution), and sec. 403 infra.

[6] As to officers invested under sec. 34, trying cases under sec. 209, see 10 Cal. 85.

[7] The question is whether the prosecution has made out a *primâ facie* case against the accused, and such case arises where credible witnesses make statements which, if believed, would sustain a conviction, 11 Bom. 372. Compare 11 & 12 Vic. c. 42, s. 25, 3 All. 27.

[8] 8 Bom. 200. As to joint charges where there has been a riot and fight between two bodies of men, see 8 Suth. Cr. 47: 9 Suth. Cr. 33.

plained, and copy furnished, to accused.

explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session [1].

Quashing commitments under ss. 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law [2].

[1] As to the place of trial, see infra, sec. 336. [2] 6 Mad. 372; 6 All. 98.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed [1]:

Summons to witnesses for defence when accused is committed.

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay [2], or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness [3] (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Refusal to summon unnecessary witness unless deposit made.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the com-

Commitment when to be notified.

[1] 6 Cal. 714. [2] 3 Cal. 573, per Jackson J.
[3] 8 All. 668: 4 Mad. H. C. 81.

mitment[1], and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge etc. to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must

[1] See form of notice, Sched. V, No. 27.

be stated as to give the accused notice of the matter with which he is charged.

Where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge[1].

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case[2].

Language of charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction[3] for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(*a*) *A* is charged with the murder of *B*. This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

[1] The Madras High Court ruled in 1881, that when the accused is liable to be punished under the Whipping Act, the charge must state the liability, 5 Mad. 158.

For forms of charges, see Sched. V. No. 28.

[2] See the Evidence Act, sec. 105.

[3] See sec. 310, infra.

(*d*) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged[1].

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c*) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d*) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e*) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f*) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

[1] Accuracy and certainty in stating the offence are more especially required where the accused is sought to be implicated for acts not committed by himself, but by others with whom he was in company, 11 Cal. 108, 11 Cal. 106; and see 6 All. 204, per Straight J.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission[1]. **Effect of errors.**

Illustrations.

(*a*) *A* is charged, under section 242 of the Indian Penal Code, with 'having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit,' the word 'fraudulently' being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) *A* is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e*) *A* was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

226. When any person is committed for trial without a charge[2], or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter[3] the charge, **Procedure on commitment without charge or with imperfect charge.**

[1] See secs. 232 and 237, infra.

[2] These words apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for, 8 Bom. 200.

[3] with due caution, see 6 Bom. H. C., Cr. 76.

as the case may be, having regard to the rules contained in this Code as to the form of charges.

Court may alter charge.

227. Any Court may alter[1] any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict[2] of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn[3] the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined[4].

Effect of material error.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under

[1] This authorises the Court to make to some specific charge an addition in the nature of an alteration; but not to add a new charge, 8 Bom. 210, 211; and see 3 Mad. 351.

[2] i.e. the final verdict which the Judge would be bound to record, 8 Bom. 211.

[3] 3 Mad. 351.

[4] In secs. 226–231 the word 'charge' has the meaning which it has in the rest of the body of the Code, viz. statement of a specific offence, 8 Bom. 209.

Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustrations.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately[1], except in the cases mentioned in sections 234, 235, 236 and 239[2].

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt[3].

Three offences of same kind within a year may be charged together.

234. When a person is accused of more offences than one of the same kind[4], committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable

[1] The mind of the Court might be prejudiced against the prisoner if he were tried in one trial upon different charges resting on different evidence, 7 All. 177.

[2] A charge containing alternative charges of perjury is not a charge of two offences, but of one, 13 Ben. 324: 10 Cal. 937. See the form, Sched. V. No. 28, ii (4), and 7 All. 44. But see 10 Bom. 124.

[3] 10 Bom. 124.

[4] Not necessarily against one and the same person, 9 Cal. 373 (on the corresponding section of Act X of 1872), dissenting from 4 All. 147. See 7 All. 174, where dishonest misappropriations by a postmaster of moneys paid to him by different persons for money-orders were held to be 'of the same kind.'

with the same amount of punishment under the same section of the Indian Penal Code[1], or of any special or local law.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence[2].

II.—Offence falling within two definitions.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

III.—Acts constituting one offence, but constituting when combined a different offence.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts[3].

Nothing contained in this section shall affect the Indian Penal Code, section 71[4].

Illustrations.

to paragraph I—

(*a*) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 491 of the Indian Penal Code.

(*d*) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

[1] See 8 Cal. 450, 634.

[2] 7 All. 29 (dissenting from 6 All. 121): 11 Cal. 349: 12 Cal. 495.

[3] 12 Cal. 495.

[4] which provides that in cases falling under the Cr. Pr. Code, sec. 235, sub-sec. iii, 'the offender shall not be punished with a more severe punishment then the Court which tries him could award for any one of such offences.'

(*e*) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses *B* of having committed an offence, knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) *A*, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code[1].

(*h*) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

[1] The convictions here referred to 'relate especially to convictions obtained under sec. 149 of the Penal Code,' 7 All. 761.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences [1].

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it [2].

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it [3].

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it [4].

Nothing in this section shall be deemed to authorise a

[1] This section, like the corresponding section (455) of the Code of 1872, refers, not to cases in which the facts are doubtful, but to cases in which the application of the law to the facts are doubtful, 7 N.W. P. 137.

[2] 8 Bom. 200.

[3] For decisions on the corresponding section (457) of the Code of 1872, see 3 Cal. 189 and 5 Cal. 871.

[4] 1 Bom. 50.

conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) *A* is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) *A* is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code[1].

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges. **What persons may be charged jointly.**

Illustrations.

(*a*) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(*b*) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(*c*) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge, charging both with the one theft, and *B* alone with the two other thefts[2].

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution[3], may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord **Withdrawal of remaining charges on conviction on one of several charges.**

[1] 23 Suth. Cr. 61.

[2] But where *A* and *B* are accused of giving false evidence in the same proceeding they should be tried separately, 11 Suth. Cr. 16: 10 Cal. 405: 5 All. 17. So where *A* and *B* are members of opposing factions in a riot, 6 Cal. 96.

[3] See sec. 495, infra.

may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn[1].

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases[2].

Substance of accusation to be stated.

242. When the accused appears[3] or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him[4]; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution[5], and also to hear the accused and take all such evidence[6] as he produces in his defence[7].

[1] Compare sec. 424.

[2] i. e. cases relating to offences not punishable with death, transportation, or imprisonment for more than six months, sec. 4, cl. (*t*). Where there are two distinct charges against the same person arising out of the same facts, and one is a summons-case and the other a warrant-case, the mode of trial should be that applicable to the greater of the two charges, i. e. the case should be tried as a warrant-case, 11 Cal. 92, per Wilson J.

[3] As to excusing his personal attendance, see sec. 205.

[4] Where he tenders a written defence the Magistrate need not examine him personally, 16 Suth. Cr. 63.

[5] As to the duty of the prosecution to call witnesses able to give material evidence, and the inference which may be drawn if they are not called, see 8 Cal. 121 : 10 Cal. 1070.

[6] A conviction by a Magistrate who has refused to examine a witness formally tendered by the accused is illegal, 4 Ben. Appx. 77.

[7] As to the memorandum of the substance of the evidence, see sec. 355.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court[1].

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal[2]. Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law[3]. Sentence.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons. Finding not limited by complaint or summons.

247. If the summons has been issued on complaint[4], and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear[5], the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused[6], unless for some reason he thinks proper to adjourn the hearing of the case to some other day[7]. Non-appearance of complainant.

[1] Where the complainant fails to make such deposit, the Magistrate deals with the case on the evidence before him, 5 Mad. 160.

[2] As to making an order for compensation against the complainant, see sec. 250, infra, 5 Mad. 381; 10 Bom. 199.

[3] He must pass *some* sentence, if only a nominal one, 4 Mad. H. C., Rulings, lxvi.

[4] See supra, sec. 4, cl. (*a*).

[5] As to dismissal where he does appear and is examined, see sec. 203, supra.

[6] 7 Mad. 213. The Magistrate need not wait till the Court is about to close for the day to give the absent complainant an opportunity of appearing, 7 Mad. 356.

[7] or to a later hour on the same day, 7 Mad. 356. The order for adjournment should ordinarily be made in the presence and hearing of the parties, and if the complainant does not appear on the day or at the hour to which the case is adjourned, the Magistrate may acquit the accused, 22 Suth. Cr. 40.

Withdrawal of complaint.

248. If a complainant[1], at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint[2], the Magistrate may permit him to withdraw the same[3], and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous or vexatious complaints.

250. If, in any case instituted upon complaint[4], a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious[5], he may, in his discretion, by his order of acquittal, direct the complainant[1] to pay to the accused, or to each of the accused

[1] In cases of contempt of the lawful authority of a public servant the 'complainant' must be deemed the public servant whose authority has been resisted, and without whose sanction the offender cannot be prosecuted, and not the person injured by the resistance, 2 Bom. 653. Of course where a judge acting judicially is 'complainant' he is not subject to the penalty provided by sec. 250; 1 Bom. 176.

[2] It will be remembered that this chapter refers only to summons-cases, 6 Mad. 316. As to compounding offences, see sec. 345 and 10 Cal. 551.

[3] And the District Magistrate cannot revive a charge which a Deputy Magistrate has allowed to be withdrawn, 25 Suth. Cr. 64: 10 Cal. 551.

[4] A case instituted by the police on a complaint to them is not 'instituted upon complaint' within the meaning of this section, 6 All. 96: 7 Mad. 563. And as the chapter refers only to summons-cases, compensation under this section cannot be given in warrant-cases: see 1 Bom. H. C. 181: 6 Mad. 316: 7 Suth. Cr. 11, 12. O course the power conferred by sec. 250 is not confined to complaints of offences under the Penal Code, 4 N. W. P. 94. As 'complaint' means an allegation that some person has committed an 'offence' (sec. 4, cl. *a*, supra) no compensation can be given under this section for an act, such as illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, which has not been made an 'offence' by that Act or otherwise, 9 Mad. 102.

[5] Where the complaint is well-founded as regards the accused *A* and frivolous as regards the accused *B*, compensation may be directed to be paid to *B*, 5 Mad. 381. Where the complaint is both frivolous and false, the award of compensation for its frivolity does not preclude the Magistrate from sanctioning a prosecution for making a false complaint, Mad. H. C. Pro., 12 Nov. 1875, cited by Henderson, p. 238.

where there are more than one, such compensation, not exceeding fifty rupees[1], as the Magistrate thinks fit[2].

The sum so awarded shall be recoverable as if it were a fine[3]: provided that, if it cannot be realised, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs[4]. Recovery of compensation.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases[5]. Procedure in warrant-cases.

252. When the accused appears[6] or is brought before a Magistrate, such Magistrate shall proceed[7] to hear the complainant (if any) and take all such evidence[8] as may be produced in support of the prosecution[9]. Evidence for prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon[10] to give evidence before himself such of them as he thinks necessary.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against Discharge of accused.

[1] Where there are (e. g.) three accused persons against each of whom the complaint is frivolous, the Magistrate may award in the whole Rs. 150, i. e. Rs. 50 to each, 14 Suth. Cr. 75.

[2] There is no appeal from an order under this section.

[3] Secs. 386, 387, infra.

[4] See form, Sched. V. No. 30.

[5] i. e. cases relating to offences punishable with death, transportation, or imprisonment for more than six months. Where the complainant makes against the same person two charges, one a summons-case, the other a warrant-case, the procedure must be under chap. xxi; 11 Cal. 91.

[6] Sec. 340.

[7] But see sec. 253, par. 2.

[8] Secs. 353–357.

[9] 3 Cal. 389: 2 All. 447.

[10] See form, Sched. V. No. 31.

the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him[1].

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless[2].

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence[3] triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty[4], the Magistrate shall record the plea[5], and may in his discretion convict him thereon.

Defence.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence[6], be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts[7].

If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for compelling production of evidence at instance of accused.

257. If the accused applies[8] to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the

[1] The discharge is not final like an acquittal, 5 Suth. Cr. 58. Where a subordinate Magistrate has improperly discharged a prisoner and no further evidence is procurable, the District Magistrate should refer the proceedings to the High Court, 1 Cal. 282: 10 Cal. 1027: 6 Mad. 25. As to reviving the proceedings where further evidence has been disclosed, see 2 Cal. 405.

[2] 10 Cal. 67.

[3] not necessarily the offence expressly charged, 5 Bom. H. C., Cr. Ca. 100.

[4] An admission which does not admit all the elements of the charge is not a plea of guilty to the charge, see 7 Cal. 96: 25 Suth. Cr. 23, col. 2.

[5] The plea, not merely a narrative of what occurred and of the statements made by the prisoner, 7 Cal. 96.

[6] even after the case for the prosecution is closed.

[7] See also sec. 257.

[8] at any time.

production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law [1].

Absence of complainant.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded [2], the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused [3].

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government [4], and

(3) any Bench of Magistrates invested with the powers

[1] He must pass *some* sentence, however slight, 3 Suth. Cr. Let. 15, col. 1. For a form of warrant of commitment on a sentence of imprisonment or fine, see Sched. V. No. 29.

[2] Sec. 345, infra.

[3] Except under this section and the last clause of sec. 253, the magistrate cannot, in a warrant case, discharge the accused in consequence of the complainant's absence, 10 Cal. 67. The magistrate need not, in order to give the absent complainant an opportunity of appearing, wait till the Court is about to close for the day, 7 Mad. 213, 356. See sec. 253, par. 2.

[4] All Assistant Commissioners in Oudh, being Magistrates of the first class, have been so empowered, Macph. Lists, 1884, p. 491. Where a Magistrate not empowered in this behalf tries an offender summarily, see sec. 530, cl. (q). That for the purpose of giving himself summary jurisdiction, he cannot split up an offence into its component parts, or reject one part of a complaint and accept another, see 4 Cal. 18 and 11 Cal. 236.

of a Magistrate of the first class and specially empowered in this behalf by the Local Government[1] may try in a summary way all or any of the following offences:—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code[2];

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences[3]:—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

[1] That a Bench empowered under section 260 can try only the offences named therein, see 21 Suth. Cr. 12, col. 2: 9 Cal. 96.

[2] 10 Cal. 408.

[3] That a Bench empowered under section 261 can try only the offences named therein, see 21 Suth. Cr. 12, col. 2: 9 Cal. 96.

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned. Procedure for summons and warrant-cases applicable.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter[1]. Limit of imprisonment.

263. In cases where no appeal lies[2], the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he[3] or they shall enter in such form as the Local Government may direct the following particulars:— Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor[4];

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

[1] This clause (which was added by the Select Committee) refers only to substantive sentences, not to cases where simple imprisonment is ordered as a process for enforcing payment of fine, 6 All. 61. Solitary confinement may be imposed as part of the sentence in summary trials, 6 All. 83.

[2] See secs. 414, 515.

[3] The magistrate must not depute this duty to a clerk, nor can he affix his signature to the record or judgment by a stamp, 6 Mad. 396.

[4] He should so state the reasons that the High Court on revision may judge whether there were sufficient materials before him to support the conviction, 6 Cal. 579.

Record in appealable cases.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies[1], such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence[2] and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk.

The Local Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

'High Court' defined.

266. In this chapter, except in sections 276 and[3] 307, the expression 'High Court' means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or

[1] See secs. 407, 415.

[2] not the substance of every separate deposition, 25 Suth. Cr. 6, col. 2. If the direction in sec. 264 is not complied with, the Court of Session should not quash the conviction merely for this reason; but if it cannot be disposed of because of this defect, the Court should require the Magistrate to repair the defect, or order a retrial, 1 All. 680.

[3] Act X of 1886, sec. 8.

under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors[1]. Trials before Court of Session.

269. The Local Government may, by order in the official Gazette[2], direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order. Local Government may order trials before Court of Session to be by jury.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury[3].

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor[4]. Conduct of trial before Court of Session.

B.—Commencement of Proceedings.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him[5], and he shall be asked whether he is guilty of the offence charged, or claims to be tried. Commencement of trial.

If the accused[6] pleads guilty[7], the plea shall be recorded[8], and he may be convicted thereon[9]. Plea of guilty.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case: Refusal to plead or claim to be tried.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit. Trial by same jury or assessors of several offenders in succession.

[1] But see sec. 536.

[2] See the notifications mentioned in the Appendix to the Code.

[3] Act X of 1880, sec. 9.

[4] Sec. 4, cl. (*m*), supra.

[5] 5 Cal. 826: 9 Mad. 61.

[6] not his counsel or pleader, 15 Suth. Cr. 42.

[7] An admission which does not comprise all the elements of the charge is not such a plea, 7 Cal. 96: 11 Cal. 410.

[8] 7 Cal. 96. The record should be in the language in which the plea is conveyed to the Court by the interpreter, 5 Cal. 826.

[9] Where there has been a previous conviction, see sec. 310, infra.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be[1].

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct[2].

Jury for trial of persons not Europeans or Americans.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors chosen by lot.

276. The jurors shall be chosen by lot[3] from the persons summoned to act as such, in such manner as the High Court[4] may from time to time by rule direct:

Proviso.

Provided that—

Existing practice.

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Persons summoned not attending.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present[5]; and

Trials before special jurors.

thirdly, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

[1] But it is not an acquittal for the purpose of sec. 403; see the explanation to that section.

[2] See the notifications mentioned in the Appendix to this Code.

[3] 1 Bom. 462.

[4] See sec. 266, supra.

[5] Cf. the English practice of awarding a *tales de circumstantibus.*

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror. Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated: Objection to jurors.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged. Objection without grounds stated.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:— Grounds of objection.

(*a*) some presumed or actual partiality in the juror[1];

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

[1] The following list of grounds of challenge, taken from the New York Code of Criminal Procedure, § 377, with some slight omissions and verbal changes, illustrates the presumed partiality here mentioned:—

1. Consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted, or to the accused.

2. Bearing to him the relation of guardian or ward, attorney or client,... master or servant, landlord or tenant,... or being in his employment on wages.

3. Being a party adverse to the accused in a civil suit, or having complained against, or been accused by him, in a criminal prosecution.

4 Having served on a coroner's jury which inquired into the death of the person whose death is the subject of the charge.

5. Having served on a jury which has tried another person for the crime with which the accused is charged.

6. Having been one of a jury formerly sworn to try the same charge and whose verdict was set aside, or which was discharged without a verdict.

7. If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the accused guilty.

'Actual partiality' is such a state of mind on the part of the juror, in reference to the case or to either party, as satisfies the Court, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. But the previous expression or formation of an opinion or impression with reference to the guilt or innocence of the accused, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual partiality, to any person otherwise legally qualified, if he declare on oath that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the Court is satisfied that he does not entertain such a present opinion or impression as would influence his verdict. See N. Y. Cr. Proc. Code, § 376.

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873[1].

Procedure when juror ceases to attend, etc.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his

[1] Act X of 1873. The Bombay High Court had ruled that in trials before Sessions Courts the jurors need not be sworn, 3 Bom. H. C., Cr. Ca. 56, and see 8 Ben. 562, per Jackson J.

attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted[1], a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of prisoner's sickness.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to close of Cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

The prosecutor shall then examine his witnesses[2].

Examination of witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence[3].

Examination of accused before Magistrate.

[1] This provision as to language was inserted by the Select Committee.

[2] It is not enough to put in the depositions and allow the witnesses to be cross-examined upon them, 9 Mad. 83. When the public prosecutor does not call a witness because he would not in his (the prosecutor's) opinion speak the truth or support his case, the prosecutor should explain his reason to the Court and offer to put the witness in the box for cross-examination, 7 All. 904. Where there has been a previous conviction, see sec. 310.

[3] before the accused is called up to enter on his defence. It must of course be first proved that the accused was the person who was examined and gave the deposition, 11 Cal. 580.

Evidence at preliminary inquiry.

288. The evidence of a witness duly taken [1] in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge [2], if such witness is produced and examined, be treated as evidence in the case [3].

Procedure after examination of witnesses for prosecution.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor [4] sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if

[1] As to the presumption that the evidence was duly taken, see the Evidence Act, sec. 80.

[2] The exercise of this discretion by a Sessions Judge is of course open to revision by the High Court on appeal, 11 Bom. H. C. 282, per West J.

[3] 9 Mad. 85. This section does not enable a Court trying a cause to take a witness's deposition bodily from the Magistrate's record, and to treat it as evidence before itself, 7 All. 863, approving of Phear J.'s remarks in 12 Ben. App. 15. The Judge should put to the witnesses whom he proposes to contradict by their former statements the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth, 7 All. 863-4, per Straight J.

[4] 11 Bom. H. C. 102.

any) and after their cross-examination and re-examination (if any) may sum up his case.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial[1].

Right of accused as to examination and summoning of witnesses.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply[2].

Prosecutor's right of reply.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

View by jury or assessors.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

When juror or assessor may be examined.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial[3].

Jury or assessors to attend at adjourned sitting.

296. The High Court may, from time to time, make rules[4] as to keeping the jury together during a trial before such

Locking-up jury.

[1] The Judge however may, if he thinks fit, permit the summoning of witnesses not so named, 8 All. 668.

[2] In applying secs. 289 and 292 the construction most favourable to the prisoner should be adopted, 10 Cal. 1024; and see 14 Cal. 245. Where the accused stated when asked under sec. 289 that he meant to adduce evidence and on further consideration did not do so, the Court should not from this circumstance make a presumption adverse to him, 10 Cal 140.

[3] See secs. 318 and 332, infra

[4] See the *Bombay Government Gazette*, 24th June 1875, Part I. p. 653.

Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence[1], and laying down the law by which the jury are to be guided[2].

[1] The Judge should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, 3 Suth. Cr. 69; and what weight the jury ought to attach to the several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict, 5 Bom. H. C., Cr. Ca. 85, 94; and see 9 Suth. Cr. 51. He should tell the jury what are the principal points in the evidence, and how they bear for or against the prisoner, 6 Suth. Cr. 72: 25 Suth. Cr. 54. He may warn them not to disbelieve a mass of otherwise consistent evidence because in minor and immaterial points the witnesses made different statements, 1 Suth. Cr. 17. Of course, where there is no legal evidence for the prosecution, the judge should direct the jury to acquit, 7 Suth. Cr. 39. If it be necessary to refer to a previous conviction of the accused, he should tell them to try the present case on its own merits, and warn them not to allow the previous conviction to influence their minds, 6 Suth Cr. 64, per Norman J. He should not give a positive opinion as to the guilt or innocence of the prisoner, as Native juries are too apt to follow it, without paying any attention to the facts of the case, 1 Suth. Cr. 26, per Glover J.; but see Suth. 1864, Cr. 5, per Jackson J. Nor should he tell the jury that the prisoner had previously been of bad character, 10 Suth. Cr. 39. Nor should he suggest that the prisoner be recommended to mercy, 14 Suth. Cr. 46. Nor should he say that a witness is deserving of credit when there is no evidence on the subject, 10 Suth. Cr. 58.

[2] so far as to make them understand the law as bearing on the facts, 8 Cal. 751, per Field J. For instance, where the prisoner is charged under sec. 304 of the Penal Code, the Judge should point out the distinction between the two classes of culpable homicide mentioned in that section, and direct them to find specially under which, if either, the prisoner was guilty, 6 Ben. Appx. 86. So on the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing thefts (Penal Code, sec. 401), the Judge should point out clearly, 1. the necessity of proof of association, and, 2. the need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts, 6 Mad. H. C. 121. So where the evidence of an accomplice is uncorroborated, the Judge should tell the jury that it is unsafe and contrary both to prudence and practice to convict on such evidence, 6 Bom. H. C., Cr. Ca. 57: see, too, 1 Mad. 394: 1 Bom. 475: 21 Suth. Cr. 69; and, where the accomplice

298. In such cases, it is the duty of the Judge— Duty of Judge.

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence[1] or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial[2];

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given[3];

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors[4].

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding[5].

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

speaks as to two or more persons having been concerned in the same offence, that his testimony should be confirmed as to all the prisoners, not only as to the circumstances of the case, but also as to the identity of the prisoners, 3 Bom. H. C., Cr. Ca. 57.

But the Judge should not argue and dispose of legal objections raised by the prisoner's counsel, 8 Suth. Cr. 88, col. 1. He should 'lay down' the law, but not discuss it. See 8 Cal. 739.

As to setting aside a verdict where the Judge has misdirected the jury, see secs. 423, cl. (*d*), 537. The question for the Appellate Court to consider is whether the tendency of the charge has been upon the whole to give a correct or an incorrect direction to the mind of the jury. It would be wrong to criticise the direction of a Judge in a Mufassal Court as if it were the charge of a Judge in an English Court of Assize, 12 Suth. Cr. 80, per Jackson J.

[1] As e. g. whether a communication is privileged or not, 10 Suth. Cr. 14.

[2] There is no exception in case of a libel or a threatening letter; see in England, Taylor, §§ 46, 47.

[3] as, for instance, when the question is whether a confession should be excluded on account of some previous threat or promise, Taylor, § 23.

[4] See more as to the duties of a Judge, 20 Suth. Cr. 41, per Markby J.

[5] But where the jury say they are uncertain as to the section of the Penal Code applicable to the case of one of the prisoners, the Judge ought not to hand them a copy of the Code leaving them to decide under what section the offence fell, 14 Cal. 164.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not [1];

(*c*) to decide all questions which according to law are to be deemed questions of fact [2];

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) *A* is tried for the murder of *B*.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts *A* ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it [3].

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

[1] Taylor, § 45.

[2] e. g. whether a provocation was grave and sudden enough to prevent the offence from amounting to murder (Penal Code, sec. 300), 11 Cal. 412. The jury decide whether the accused has been previously convicted, 21 Suth. Cr. 40.

[3] When the existence of a specific intention is essential to the commission of a crime, it is probable (though the law nowhere says so) that the jury, in deciding whether an offender had that intention, should take into account the fact that he was drunk when he did the act which, if coupled with that intention, would constitute such crime. See Stephen's Digest, art. 29.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict. Retirement to consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority. Delivery of verdict.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous. Procedure where jury differ.

303. Unless otherwise ordered by the Court, the jury shall return a verdict[1] on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is[2]. Verdict on each charge. Questioning jury.

Such questions and the answers to them shall be recorded. Questions & answers recorded.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended. Amending verdict.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion. Verdict in High Court when to prevail.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

If the Judge disagrees with the majority, he shall at once discharge the jury. Discharge of jury in other cases.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

[1] in any form they think fit, 8 Ben. 557, 563.

[2] 21 Suth. Cr. 1, and see 9 Cal. 53. But he should not make minute inquiries to learn the nature of the majority and its opinion, so that he may have the opportunity of accepting or refusing that opinion as a verdict, according as it coincides with his own opinion or not, 10 Cal. 144.

Verdict in Court of Session when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or with a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court[1], he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal[2]; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session[3].

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he

[1] 2 Bom. 526, 527.

[2] 11 Ben. 19. It may, for example, send for additional evidence and deal with the case generally; see chap. xxxi.

[3] This casts the functions both of the Judge and the jury on the High Court, and thus differentiates its position very widely from that of the superior Courts in England, 1 Bom. 12, 13, per West J., on the corresponding clause of Act X of 1872. Nevertheless, the High Court should not set aside the verdict of a jury unless it be perverse and patently wrong, or may have been induced by an error of the Judge, ibid. See 9 Cal. 53: 11 Cal. 85: 10 Bom. 497.

That a trial is not 'concluded' until judgment and sentence are passed, see 9 All. 424, and L. R., 9 Q. B. 350.

should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

II.—Conclusion of Trial in Cases tried with Assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence[1], and shall then require each[2] of the assessors to state his opinion orally, and shall record such opinion[3]. Delivery of opinions of assessors.

The Judge shall then[4] give judgment; but in doing so shall not be bound to conform to the opinions of the assessors. Judgment.

If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of previous Conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid Procedure in case of previous conviction.

[1] 7 Ben. 63. The object of this provision is to enable the Sessions Judge in long or intricate cases to place the evidence in an intelligible form so as to assist the assessors in arriving at a reasonable conclusion, 9 Cal. 876. Although there was and is no provision requiring the Judge to charge the assessors or lay down the law, the High Court of Madras (4 Mad. H. C., Rulings, vii) thought that, in cases turning on the evidence of an accomplice, the Judge should inform the assessors, first, that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; secondly, that, as a general rule, it is considered unsafe to convict upon such evidence; and, thirdly, to point at any circumstances in the particular case which, in the opinion of the Judge, afford a sufficient reason for relying upon the evidence in that case. So in capital cases, the Judge should explain the difference between culpable homicide and murder, 3 Suth. Cr. 18. So where the prisoner pleads not guilty, and the Public Prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty, 4 Mad. H. C., Rulings, xxxix. And he should call their attention to gross discrepancies and impossible misstatements made by witnesses, if the assessors failed to notice them, 5 Suth. Cr. 70, 71, col. 1.

[2] The Court should not receive the opinion of all the assessors combined, as delivered through one of them.

[3] He must record the grounds of each assessor's opinions, 3 Suth Cr. 6, whether the prisoner is acquitted or convicted. *Secus* 7 Bom. H. C., Cr. Ca. 82 (1870).

[4] Not necessarily at once; see sec. 366, infra.

down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again[1].

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Jurors' book.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Number of special jurors.

312. The names of not more than four[2] hundred persons shall at any one time be entered in the special jurors' list.

Lists of common and special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes[3], prepare—

[1] Cf. 6 & 7 Will. IV, c. 111 (Archbold, p. 1030), by which this section was suggested.

[2] Act V of 1887, sec. 2.

[3] See *Fort St. George Gazette*, Supplement, 25th April, 1876.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except or next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

(*a*) officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the preventive service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors[1].

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf[2], shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-

[1] See notifications in Macpherson's *Lists*, 1884, pp. 126, 127, 551.

[2] Ibid. p. 552.

houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

325. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

District Magistrate to summon jurors and assessors.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magis-

trate[1] requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Power to summon another set of jurors or assessors.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or, whenever for other reasons such direction is found to be necessary.

Form and service of summons.

328. Every summons[2] to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Excusing attendance of juror or assessor.

330. The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

List of jurors and assessors attending.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such sessions.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised

[1] See form of precept, Sched. V. No. 32. [2] See form, Sched. V. No. 33.

list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order[1] of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

Power of Advocate-General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

[1] There is no appeal from this order, sec. 404, infra. But see 8 Suth. Cr. 83.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court. **Notice of sittings.**

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, **Place of trial of European British subjects.**

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate[1], may, with the view of obtaining the evidence of any person[2] supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor in the commission thereof[3]. **Tender of pardon to accomplice.**

[1] See sec. 529 (*g*), infra.

[2] A pardon may be tendered under this section to a prisoner who has pleaded guilty; but not it seems to one who has pleaded guilty and been convicted on his plea, 7 All. 160.

[3] As to the Magistrate's duty to explain the condition, see 4 Ben. Appx. 51: 12 Suth. Cr. 80, S. C. Where the approver retracted his statement, see 5 N. W. P. 217: 10 Bom. 190.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence[1], tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter[2].

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in

[1] These words merely exclude the case of a man who has actually been convicted of the offence, not the case of a man who, though admitted to be a party to the offence, is unconvicted, 7 All. 163. But the offence must be 'triable exclusively by the Court of Session or High Court': see sec. 337 and 10 Cal. 936.

[2] The pardon may be withdrawn at any time, 8 Cal. 560.

respect of such statement shall be entertained without the sanction of the High Court[1].

340. Every person accused before any Criminal Court may of right be defended by a pleader[2]. Right of accused to be defended.

341. If the accused, though not insane[3], cannot be made to understand the proceedings[4], the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances[5] of the case, and the High Court shall pass thereon such order as it thinks fit. Procedure where accused does not understand proceedings.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him[6], the Court may, at any stage of any inquiry or trial[7], without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence. Power to examine the accused.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into

[1] As to the admissibility of a deposition by a person to whom a pardon has been tendered which is subsequently revoked, see 11 Cal. 580.

[2] Sec. 4, cl. (*s*), supra. This section does not apply when the Court is exercising its powers of revision; see sec. 440, infra.

[3] When he is insane see chap. xxxiv, infra.

[4] As, for instance, when he is deaf and dumb; see 22 Suth. Cr. 35, 72.

[5] Before reporting the circumstances the Court must finish the inquiry or trial.

[6] and only for this purpose, 1 Mad. H. C. 199: 6 Cal. 279. The Court must not cross-examine the accused, 6 Cal. 102: 10 Cal. 143. See supra, p. 20. But see 5 All. 253. The Court should not put questions to the prisoner during his trial with a view to supplement the evidence for the prosecution, 3 Bom. H. C., Cr. Ca. 51. As to examining one of two accused persons in the absence of his fellow-prisoner, see 6 Bom. 124: 7 Cal. 65.

[7] after evidence is recorded against him, 9 Mad. 224.

consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge[1].

Power to postpone or adjourn proceedings.

344. If, from the absence of a witness[2] or any other reasonable cause[3], it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor[4], from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody[5]:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—

[1] And see the Evidence Act, secs. 24–29.

[2] 16 Suth. Cr. 21.

[3] That the Court is not at liberty arbitrarily to postpone or adjourn, see 9 Ben. 354, 362, per Couch C.J.

[4] 6 Mad. 63.

[5] 6 Mad. 69. As to releasing him on bail, see infra, sec. 496.

Offence.	*Sections of Indian Penal Code applicable.*	*Person by whom offence may be compounded.*
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman [1].
Enticing or taking away or detaining with a criminal intent a married woman	498	
Defamation...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ...	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt [2], causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life,

[1] 5 Bom. H. C., Cr. Ca. 27.

[2] For the previous law as to compounding this offence, see 1 Bom. 147.

punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court[3] before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded[1].

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction[2], as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself[3], or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when after commencement of inquiry or trial

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High

[1] This will prevent the suppression of prosecutions for the offences specified in this paragraph when the public is deeply interested in the punishment of the offender.

[2] 4 Mad. 327.

[3] He should hear all the evidence in the case before deciding it, just as if no proceedings had been taken by the submitting Magistrate, 14 Suth. Cr. 3.

Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

Magistrate finds case should be committed.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order[1] in the case as he thinks fit, and as is according to law: provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

[1] This does not deprive him of his power to commit the case to the sessions for trial, 4 Bom. 240: 10 Bom. 196: 1 Mad. 289: 13 Cal. 305: 9 Mad. 377; and see 14 Cal. 355. It has been held in Madras that the Magistrate to whom a case is sent under this section cannot send it on for inquiry to another Magistrate, 4 Mad. 233. But see 7 Bom. H. C., Cr. Ca. 69.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part[1] of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding[2] may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

351. Any person attending a Criminal Court[3], although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognisance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Courts to be open.

352. The place in which any Criminal Court is held for

[1] 24 Suth. Cr. 53.

[2] There is no such provision in the case of the Sessions Judge, 3 Mad. 112. The object of sec. 350 is to provide for the necessarily frequent change in the office of Magistrate.

[3] This includes a Sessions Court; see the saving in sec. 193, supra.

the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Recording evidence in Provinces.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate [1]) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate [1], and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds [2].

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability

[1] See sec. 362, infra.

[2] It is not enough to state that a witness 'deposes as last witness,' 1 Bom. H. C. 91.

to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue[1].

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands[2].

[1] See notifications in Macpherson's *Lists*, 1884, pp. 215, 481, 492, 552, 595.

[2] This section does not apply to the examination of prisoners, 12 Suth. Cr. 44. As to them, see sec. 364.

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence[1] is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader[2] and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted[3] to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court[4]. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

[1] i.e. oral evidence, 15 Suth. Cr. 25. As to documentary evidence, though the prisoner has a right to have all or any part of any document used on his trial interpreted to him, yet where it is put in merely to give formal proof of an uncontestable fact it is enough to make him understand what the document is and why it is put in, Ibid.

[2] Sec. 205, supra.

[3] Sec. 543, infra.

[4] The drafting here is faulty. The meaning probably is that no such sentence shall be passed unless the Magistrate has either himself taken down the evidence or caused it to be taken down from his dictation.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full [1], in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers. Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the record shall be signed [2] by the accused [3] and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263 [4].

[1] not necessarily by the Magistrate's own hand, 20 Suth. Cr. 50: 1 Bom. 219.

[2] Where the accused is unable to write his name, this would probably be construed to include 'marked.'

Where the accused at the time of trial confesses his guilt to the Court this provision is inapplicable, for the Court may sentence him at once under sec. 255; see 3 Cal. 756.

[3] This provision is merely directory. Refusal to sign is not punishable under the Penal Code, sec. 180; see 4 Bom. 15.

[4] As to the effect of not fully complying with the provisions of this section, see sec. 533 infra, and 12 Suth. Cr. 44. Omission to record in the vernacular questions asked in the examination of the accused does not necessarily render that examination inadmissible as evidence, 8 Cal. 618, n.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Panjáb may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court[1], or in English; and shall contain the point or points for determination, the decision thereon[2], and the reasons for the decision[3]; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced[4].

When the conviction is under the Indian Penal Code, and

[1] Sec. 556, infra.

[2] A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are commited for trial, 13 Suth. Cr. 50.

[3] 11 Cal. 449: followed in 13 Cal. 110.

[4] The Judge cannot declare that sentence of imprisonment shall run from a period prior to the conviction, 4 N. W. P. 9.

it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. Judgment in alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury [1].

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead [2]. Sentence of death.

No sentence of transportation shall specify the place to which the person sentenced is to be transported. Sentence of transportation.

369. No Court, other than a High Court [3], when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error [4]. Court not to alter judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars [5]:— Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the

[1] i. e. so much of the charge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection, 23 Suth. Cr. 32, col. 2.

[2] For form of warrant see Sched. V. No. 35.

[3] So far as affects the High Court this section applies merely to questions of law arising in its original criminal jurisdiction, which are reserved and subsequently disposed of under sec. 434 and the Letters Patent, 7 All. 672. As to reviewing or reconsidering interlocutory orders, see 8 Cal. 3. See sec. 434, infra.

[4] 14 Cal. 42. The High Court has no power under this section to review an order dismissing an application for revision made by an accused person, and the only remedy is by appeal to the prerogative of the Crown as exercised by the Local Government, 7 All. 672: 10 Bom. 176.

[5] 14 Cal. 174.

case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment[1], or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost[2].

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred[3].

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held[4].

[1] as a substantive sentence. Clause (*i*) does not apply to cases where imprisonment is only inflicted in default of payment of a petty fine, 14 Cal. 174.

[2] And see sec. 548, infra.

[3] See the Limitation Act, infra, Sched. II. Art. 150.

[4] The proposal that a copy of the judgment should be forwarded was rejected by the Select Committee, as its adoption would have involved needless labour.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death[1], the proceedings[2] shall be submitted to the High Court[3], and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

375. If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Power to direct further inquiry to be made or additional evidence to be taken.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury[4], the High Court—

Power of High Court to confirm sentence or annul conviction.

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him[5], or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

[1] Form of warrant of commitment, Sched. V. No 34.

[2] including an English translation of the whole of the evidence and a statement whether or not the prisoner has signified his intention to appeal.

[3] without any recommendation to mercy, Mad. H. C. Pro., 3rd April, 1873, cited by Henderson.

[4] 19 Suth. Cr. 57.

[5] See 1 Bom. 639, as to the corresponding section (228) of the Code of 1872.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge[1] or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation[2], such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed[3]; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence

[1] Sec. 31, supra.

[2] See secs. 31 and 34, supra, and 6 Cal. 624, 9 Cal. 513.

[3] This enables the Sessions Judge to enhance the sentence.

has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary [1]. Execution of order passed under section 376.

382. If a woman sentenced to death be found [2] to be pregnant [3], the High Court [4] shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life [5]. Postponement of capital sentence on pregnant woman.

383. Where the accused is sentenced to transportation or imprisonment [6] in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant. Execution of sentences of transportation or imprisonment in other cases.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined. Direction of warrant for execution.

[1] For forms of warrant see Sched. V. Nos, 35, 36.

[2] By whom? There is no provision for pleading pregnancy, or for a jury of matrons or physicians, as in the N. Y. Crim. Pr. Code, § 500.

[3] i.e. with child. The Code, unlike the English law, does not require that the child be alive in the womb.

[4] not the Sessions Judge.

[5] Where a man sentenced to death attempted to commit suicide by cutting his throat, and there was a risk of decapitation if he were hung, the High Court commuted the sentence to transportation, 2 C. L. R. 215, cited by Henderson, p. 340.

[6] That except in the cases provided for by secs. 388, 401, and 426, the execution of a sentence of imprisonment cannot be suspended, see 3 Ben. Ap. Cr. 50.

Warrant with whom lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant[1] for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned[2].

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office[3].

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whip-

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the

[1] See the form, Sched. V. No. 37.

[2] That imprisonment and distress may be simultaneously ordered, see 9 Suth. Cr. 50. That imprisonment suffered in default of payment of a fine does not exempt the offender's property from distraint, see 3 Suth. Cr. 62.

A fine may be levied at any time within six years after the passing of the sentence, Penal Code, sec. 70.

[3] 9 Suth. Cr. 50,

whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

ping, in addition to imprisonment.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs[1]; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

In no case shall such punishment exceed thirty stripes.

Number of stripes.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

Not to be executed by instalments.

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

Exemptions.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender unwell.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped[2].

Stay of execution.

[1] Notifications under this section have been published by the Local Governments of Madras, Bombay, the Central Provinces, and British Burma; see Macpherson's *Lists*, 1884, pp. 127, 272, 505, 552.

[2] 3 Mad. H. C., Rulings, i.

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Procedure if punishment cannot be inflicted under section 394.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment.

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced: Sentence on offender already sentenced for another offence.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. Saving as to sections 396 and 397.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences [1].

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory [2] established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein [3]. Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

[1] Act X of 1886, sec. 11.

[2] See Act V of 1876, secs. 7, 9.

[3] Rules for Reformatories have been made by the Local Governments of Bombay and British Burma; see Macpherson's *Lists*, 1884, pp. 194, 536.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled[1], the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted[1] may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will[1].

[1] Act X of 1886, sec. 11.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons [1], reprieves [2], respites or remissions of punishment.

402. The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:— Power to commute punishment.

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine [3].

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. A person who has once been tried by a Court of competent jurisdiction [4] for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237 [5]. Person once convicted or acquitted not to be tried for same offence.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted

[1] As to this branch of the prerogative see 3 Inst. 233, and Hawk. P. C. b. 2, c. 37, s. 33. The code is silent as to pleading pardons.

[2] Hawk P. C. b. 2, c. 51, s. 8.

[3] And see the Prisoners Act, V of 1871, secs. 23, 24, 25.

[4] in British India?

[5] 8 Mad. 296.

by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section[1].

Illustrations.

(*a*) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts[2], with theft simply, or with criminal breach of trust.

(*b*) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) *A* is tried for causing grievous hurt and convicted. The person injured afterwards dies. *A* may be tried again for culpable homicide.

(*d*) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(*e*) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph three of this section.

(*f*) *A* is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of *B*. *A* may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) *A*, *B* and *C* are charged by a magistrate of the first class with, and convicted by him of, robbing *D*. *A*, *B* and *C* may afterwards be charged with, and tried for, dacoity on the same facts[3].

[1] And of course where the accused has been acquitted at a trial by a Court without jurisdiction he cannot plead this as an acquittal for the purposes of this section, 2 Suth. Cr. 10. See secs. 240 (withdrawal of charges), 308 (entry by Sessions Judge), and 345 (composition) for transactions amounting to acquittals.

[2] The words 'upon the same facts' should come next after 'charged.'

[3] For other illustrations see 7 Suth. Cr. 15 (where Peacock C.J. discusses the English plea of *autrefois acquit*): 7 Mad. 557: 8 Mad. 296: 7 Ben. Appx. 25.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.[1]

OF APPEALS.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force[2].

Unless otherwise provided, no appeal.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application under sec. 89.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

[1] The provisions of this chapter apply, so far as they are applicable, to appeals under sec. 486, infra. Where no appeal lies, the High Court as a court of revision will in very exceptional circumstances exercise the powers of an appellate court; see sec. 439, infra, and 8 Bom. 197.

[2] Thus, no appeal lies from an order passed by a District Magistrate under sec. 123 requiring a person to be detained in prison until he should provide security for his good behaviour, 9 Cal. 879. No appeal lies from an order under sec. 22 of the Cattle Trespass Act, I of 1871, awarding compensation, 10 Bom. 230. No appeal lies to a District Magistrate from a sentence passed under chap. xviii, supra, by a Bench invested with first-class powers, 9 Cal. 96. No appeal lies from an order under sec. 488 for the payment of maintenance, 7 Suth. Cr. 10.

As to appeals to Her Majesty in Council, see 24 & 25 Vic. c. 104, sec. 11, and Charter, § 41 (Macpherson, p. 84). For the old law, see 7 Moore, I. A. 72 (where an appeal was allowed from a judgment of the Supreme Court at Calcutta in case of murder): 3 ibid. 468, 488. Where the High Court punishes for contempt committed by publishing a libel out of Court when the Court is not sitting, such a case is not a proper one for appeal to Her Majesty, L. R., 10 I. A. 171.

Appeal from sentence of second or third class Magistrate.

407. Any person convicted on a trial[1] held by any Magistrate of the second or third class[2], or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals[3], and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate[4] or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session;

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

[1] This does not include a person ordered under section 22 of the Cattle Trespass Act to pay compensation, 10 Bom. 230.

[2] or by a Bench of Magistrates invested with second or third class powers, 9 Mad. 36.

[3] First class Magistrates in charge of divisions in Sind were invested with such powers under the corresponding section (266) of the Code of 1872; see Macpherson's *Lists*, 1884, p. 210.

[4] This includes a District Magistrate invested with powers under sec. 30; 9 Cal. 513, 516.

410. Any person convicted on a trial held[1] by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court[2]. Appeal from sentence of Court of Session.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees[3]. Appeal from sentence of Presidency Magistrate.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence[4]. No appeal in certain cases when accused pleads guilty.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only. No appeal in petty cases.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only. No appeal from certain summary convictions.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or Proviso to sections 413 and 414.

[1] Where the Sessions Judge's judgment was in *form* a mere confirmation of the Assistant Magistrate's judgment and sentence, but in *substance* an original judgment, an appeal lies from it to the High Court, 2 Suth. Cr. 13, 19.

[2] The High Court cannot hear appeals from convictions by any other officers, such as e.g. the Superintendent of the Katák Tributary Mahâls, when the offence was committed outside British India, 9 Cal. 288.

[3] These words do not include a sentence of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid, 2 Mad. 30, 32.

[4] 5 Bom. 85.

more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on E. B. subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal in case of acquittal.

417. The Local Government may direct the Public Prosecutor[1] to present an appeal to the High Court from an original or appellate order of acquittal[2] passed by any Court other than a High Court[3].

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law[4].

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader[5], and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer

[1] Sec. 4, cl. (*m*), supra, p. 62.

[2] 24 Suth. Cr. 41.

[3] See sec. 423, clauses (*a*) and (*d*). Such appeal, when the order is passed in a case tried by a jury, lies on a matter of law only, 10 Cal. 1030. See sec. 418. Where the Sessions Judge disagrees with a verdict acquitting the prisoner but passes judgment in accordance therewith, an appeal lies under this section, 2 Cal. 273, but only on matter of law. As to the time within which appeals from acquittals must be presented, see the Limitation Act, Sched. II. art. 157. When an appeal comes on for hearing, the Public Prosecutor begins, 20 Suth. Cr 33.

[4] So are omission to consider, and erroneously setting aside, relevant evidence. Nothing in sec. 418, or the rest of this chapter, affects the power conferred by sec. 307, supra, 9 All. 425.

[5] Sec. 4, cl. (*n*). But see 1 Mad. 304: 6 Bom. 14.

in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court[1].

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity[2] of being heard in support of the same. **Summary rejection of appeal.**

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so[3].

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf[4], of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal; **Notice of appeal.**

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may— **Powers of Appellate Court in disposing of appeal.**

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried[5] or committed for trial, as the case may be,

[1] Facilities, such as paper, pens, ink, and, if necessary, an amanuensis, should be given to the petitioner, 13 Suth. Cr. 69. So far as concerns the requirements of the Limitation Act, presentation to the officer in charge of the jail is equivalent to presentation to the Court, 9 Mad. 259.

[2] 5 Mad. 11.

[3] The powers conferred by this section should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under it, 8 All. 515.

[4] Notifications under this section have been issued by the Local Governments of Bengal, the Panjáb, the Central Provinces, British Burma, and Assam; see Macpherson *Lists*, 1884, pp. 361, 481, 515, 552, 658.

[5] 24 Suth. Cr. 24, col. 2.

or find him guilty and pass sentence on him according to law[1];

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial[2], or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him[3].

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court[4]:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable

[1] This clause applies only to the High Court, 7 Mad. 214. See sec. 417.

[2] 8 All. 14.

[3] That this section does not affect the power conferred by sec. 307, see 9 All. 425.

[4] 11 Cal. 449, where a Session Judge was held bound by sec. 367, supra.

to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal. Release of appellant on bail.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail [1].

Arrest of accused in appeal from acquittal.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall for the purposes of Chapter XXV be deemed to be an inquiry.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions

Procedure where Appellate

[1] 1 Cal. 281: 2 All. 340, 386.

Judges are equally divided.

thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final [1], except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant [2].

CHAPTER XXXII.

OF REFERENCE AND REVISION [3].

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Reserving questions arising in original jurisdiction of High Court.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more

[1] 4 Bom. 101.

[2] The High Court may, nevertheless, call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it considers just, 2 Bom. 564.

[3] That a Joint Sessions Judge (sec. 9) cannot exercise the powers of a Sessions Judge under this chapter, see 9 Bom. 168; and see 9 Bom. 532.

Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the judge thinks fit, be admitted to bail,

and the High Court shall have power to review the case [1], or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit [2].

Power to call for records of inferior Courts.

435. The High Court [3] or any Court of Session [4], or District Magistrate [5], or any Sub-divisional Magistrate empowered by the Local Government in this behalf [6], may call for and examine the record of any proceeding before any inferior Criminal Court [7] situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court [8].

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon, as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings

[1] 2 Bom. 61.

[2] Where on the application of the prisoner's counsel a question is reserved under this section the prisoner's counsel has the right to begin, 8 Bom. 200. See 3 Bom. H. C., Cr. Ca. 20, 22: 5 Bom. 338, 341.

[3] The High Court has under this section power to go into questions of fact, but it generally declines to exercise it, 10 Calc. 1049.

[4] 8 Cal. 644.

[5] 12 Cal. 473: 8 Mad. 18: 9 Bom. 100: 7 All. 853.

[6] The Madras Government has empowered *all* its Subdivisional Magistrates in this behalf, Macph. *Lists*, 1884, p. 127.

[7] The District Magistrate may therefore call for the record of proceedings before a Magistrate of the First Class in his district, 9 Bom. 102, or a Sub-divisional Magistrate of the First Class, 8 Mad. 18. See sec. 17 supra, where the word used is 'subordinate'; but there cannot be subordination without inferiority. *Secus* 10 Cal. 268, 551: 7 All. 134.

[8] See 2 Cal. 293: 8 Cal. 580: 24 & 25 Vic. c. 104, sec. 15.

under section 176 are not proceedings within the meaning of this section.

Power to order commitment.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session[1] or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial[2] upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made[3]:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate[4] to him to make, and the District Magistrate[5] may himself make, or direct any subordinate Magistrate to make, further inquiry[6] into any complaint which has been dismissed

[1] As to the High Court, see 6 All. 40, and sec. 439, infra.

[2] The High Court will not interfere with the exercise of this discretionary power, 2 Suth. Cr. 44: 7 ibid. 38.

[3] 22 Suth. Cr. 67: 6 Mad. 372.

[4] The term 'inferior' is used in sections 435 and 436 because in both these sections the Court of Session and the District Magistrate are combined, and the Magistrates (other than the District Magistrate), though subordinate to the District Magistrate, are not so generally to the Court of Session. But in sec. 437 the District Magistrate being dealt with separately from the Court of Session, the use of the term 'inferior' is no longer necessary, and accordingly the term used is 'subordinate,' 8 Mad. 19.

[5] but not a Deputy Magistrate placed in charge of the current duties of the District Magistrate's office, 11 Cal. 236.

[6] i.e. an inquiry upon further materials, not a rehearing upon the same evidence, 10 Cal. 207, 1027: 12 Cal. 552: 8 Mad. 336; but see 10 Bom. 131: 9 All. 52.

The 'further inquiry' should ordinarily be conducted by the Magistrate who first inquired into the case, 8 Mad. 299.

under section 203, or into the case of any accused person who has been discharged[1].

438. The Court of Session or District Magistrate[2] may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed[3], may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail[4] or on his own bond. Report to High Court.

439. In the case of any proceeding[5] the record of which has been called for by itself, or which has been reported for orders, or which otherwise[6] comes to its knowledge, the High Court may, in its discretion, exercise any of the powers[7] conferred on a Court of appeal by sections 195, 423, 426, 427 and 428[8], or on a Court by section 338, and may enhance the sentence[9]; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429[10]. High Court's powers of revision.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

[1] 6 All. 367. The order to make further inquiry sets aside a prior order of discharge, and leaves the inquiry before the Magistrate open (as it was before that order) to further evidence under sec. 252, and to decision under sec. 253 and subsequent sections of ch. xxi, 7 Mad. 456.

[2] but not a Joint Magistrate of a District, 14 Suth. Cr. 25. A District Magistrate who considers that there has been a miscarriage of justice in the Sessions Court should not report the case for orders under this section, but communicate with the Public Prosecutor, 9 All. 362.

[3] In the absence of such recommendation there seems no power to admit the accused to bail, 23 Suth. Cr. 40. But see sec. 498.

[4] Chap. xxxix, infra.

[5] whether judicial or non-judicial.

[6] 2 Mad. 38.

[7] Thus, it may annul a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter, 7 All. 135; and if it considers that the accused has been improperly discharged, it may order him to be committed for trial, 6 All. 40, and see 1 All. 139.

[8] But in non-appealable cases the High Court, except on very exceptional grounds, will not exercise under this section the powers of an Appellate Court, 8 Bom. 197.

[9] so as to alter its nature, 6 All. 622: 11 Cal. 530.

[10] Except in very exceptional instances, these powers will not be exercised in reference to questions of fact, 6 All. 485.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction [1].

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Statement by Presidency Magistrate of grounds of his decision.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

[1] But as to revising an order of acquittal, see 9 All. 134.

A Divisional Bench of a High Court has no power under this section to review its judgment pronounced in a criminal case, 10 Bom. 176: 7 All. 672; but see 8 Cal. 63, 72.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or [1] Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject [2], shall inquire into or try any charge against an European British subject [2].

Magistrates who may inquire into and try charges against E. B. subjects.

444. No Judge presiding in a Court of Session, except the Sessions Judge [3], shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government [4].

Judge presiding in Court of Session.

Assistant Sessions Judge.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognisance of an offence committed by any European British subject in any case in which he could take cognisance of a like offence if committed by another person:

Cognisance of offence committed by E. B. subject.

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject

[1] Inserted by Act III of 1884, sec. 3.

[2] This means, and should be, 'shall inquire into or try any offence alleged to have been committed by an European British subject.' For the definition of this expression see sec. 4, cl. (*). As to proof of nationality, see Turnbull's case, 6 Mad. H. C. 7.

[3] Inserted by Act III of 1884, sec. 4.

[4] Nothing in sec. 443 or sec. 444 applies to proceedings against European British subjects in certain cases of contempt, sec. 480, infra.

accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences of Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or [1] Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees, or both [2].

And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both [3].

When commitment is to be to Court of Session and when to High Court.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court [4].

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court [4].

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court [4] under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences of Court of Session on E. B. subjects.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

[1] Inserted by Act III of 1884, sec. 5.

[2] 4 All. 141.

[3] Added by Act III of 1884, sec. 5.

[4] See sec. 4, cl. (i), supra, p. 62; and in British Burma, see sec. 185, para. 2.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

450. *Repealed by Act III of* 1884, *sec.* 6.

451. In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

Mixed jury for trial of European British subjects.

451 A. (1) In trials of European British subjects before a District Magistrate, any such subject may in a summons case, before he is heard in his defence under section 244, or in a warrant case, before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of E. B. subject to claim jury before District Magistrate.

(2) If a claim is made under subsection (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any order as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury[1] before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial[2].

(7) All Courts may construe any of the provisions referred to in subsection (5) or subsection (6), in so far as they are made applicable by that subsection with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447[3].

Transfer to another Court, in certain cases.

451 B. (1) If an accused person claims to be tried by jury under section 451 A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451 A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under sections 451 A[4].

Trial of E. B. subject and

452. In any case in which an European British subject is accused jointly with a person not being an European British

[1] This refers generically to the 'class of cases triable by a Sessions Judge with the help of a jury, and their trial, as contradistinguished from those tried with the help of assessors or in any other manner mentioned in the Code,' 9 All. 424, per Straight J.

[2] The effect of this clause is to confer on the District Magistrate precisely the same authority as the Sessions Judge has, under sec. 307, to submit a case when he disagrees with the jury, 9 All. 424.

[3] Added by Act III of 1884, sec. 8.

[4] Added by Act III of 1884, sec. 8.

subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Native jointly accused.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

When Native may claim separate trial.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall [1] inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

Procedure on claim of person to be dealt with as E. B. subject.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried

Failure to plead status a waiver.

[1] before going into the case, 4 All. 141.

or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject[1], and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not[2].

Trial under this chapter of person not an E. B. subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of E. B. subject unlawfully detained to apply to be brought before High Court.

456. When any European British subject[3] is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

[1] i. e. as regards the tribunal, the procedure, and (if convicted) the punishment, 6 Cal. 83, 87.

[2] *Re Foy*, 1 Tayl. & Bell, 219. But omission to ask this question will not affect the validity of any proceeding, sec. 534. It must however appear that the European British subject's rights have been distinctly made known to him and that he was enabled to exercise his choice and judgment whether he would or would not claim them, 6 Cal. 83, 87, 88.

[3] This section does not apply to Natives, 1 All. 1, 5.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct[1].

Territories throughout which High Court may issue such orders.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein[2].

Acts conferring jurisdiction on Magistrates or Court of Session.

Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session[3] not being a Justice of the Peace[2].

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans.

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Jury when European or American charged jointly with one of another race.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section 451 A

Summoning and empanelling jurors under s. 451 or 460.

[1] See the five notifications, dated respectively 23 Sept. 1874, issued by the Governor General in Council under 28 Vic. c. 15. sec. 3, *Gazette of India*, 1874, p. 486, and a sixth notification, dated 18 Dec. 1874, ibid., p. 612. See also 9 Bom. 288, 333, and 5 Mad. 333.

[2] See 5 Mad. H. C. 277.

[3] Inserted by Act III of 1884, sec. 9; which section also repealed the last sixteen words of sec. 459 of Act X of 1882.

or 451 B[1], the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Prosecution of Europeans and Americans.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

Procedure where accused appears insane to Magistrate.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs[2], and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

[1] Added by Act III of 1884, sec. 10.

[2] See notifications by the local Governments of Madras, Bombay, and Assam, Macpherson, *Lists*, 1884, pp. 114, 233, 658.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case [1].

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity [2], and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure where person committed before Court of Session or High Court appears insane.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government [3], and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order [4].

Custody of lunatic.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

[1] and report the case to the Local Government, 1 Suth. Cr. 11. Where the accused, though not insane, cannot be made to understand the proceedings, see sec. 341, supra.

[2] 10 Ben. Appx. 10.

[3] 6 Suth. Cr. 3, col. 2.

[4] And thereupon the authority of the Magistrate or Court over the lunatic ceases and does not revive until he is taken back under sec. 473; see 2 Cal. 356.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law[1], the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not[2].

[1] See the Penal Code, sec. 84; vol. I. p. 117.

[2] See for a form of such finding, 8 Suth. Cr. Letters, 19. Where the jury finds that the accused was insane at the time at which he is alleged to have committed an offence, the High Court will not interfere with the verdict except upon the clearest evidence that the jury was mistaken, 19 Suth. Cr. 45.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

Person acquitted on such ground to be kept in safe custody.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Lunatic prisoners to be visited.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner reported capable of making defence.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been

Procedure where lunatic confined under s. 466 or 471 declared fit for discharge.

already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Governor General in Council may remove criminal lunatics from one province to another.

475 A. The Governor General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India [1].

Local Government may relieve Inspector General of certain functions.

475 B. The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector General of Prisons under section 472, section 473, or section 474 [1].

[1] Act X of 1886, sec. 12.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary [1], may send the case for inquiry or trial to the nearest Magistrate of the first class [2], and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Procedure in cases mentioned in s. 195.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorised under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate [3].

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding [4], and may commit, or admit to bail and try, such person upon its own charge [5].

Power of Court of Session as to such offences committed before itself.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice [6] of any

Power of Civil and Revenue

[1] to satisfy the Court that there is ground for etc., 7 Mad. 189, 190: 5 All. 62: 6 All. 98, 114. The preliminary inquiry need not be conducted in presence of the accused, 9 Suth. Cr. 3, or extend to all the persons who may be implicated in the offence, 7 Mad. 224.

[2] 13 Suth. Cr. 45.

[3] And he may discharge the accused if he thinks the evidence not sufficient to warrant committal, 5 Bom. H. C., Cr. 41. Sec. 476 is intended to avoid the inconvenience which would be caused if a Judge were obliged to appear before a Magistrate and make a complaint on oath in order to lay a foundation for a prosecution, 7 All. 871.

[4] 6 All. 103.

[5] A District Judge who has, as such, sanctioned a prosecution for forgery, may, in his capacity as Sessions Judge, try the offence, 6 Bom. 479.

[6] 4 Ben. Ap. Cr. 9.

Courts to complete investigation and commit to High Court or Court of Session.

Civil or Revenue Court in the course of a judicial proceeding [1], and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil Court in such cases.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if he thinks fit, take cognisance of the offence and sentence the offender to fine not exceeding two hundred rupees [2], and, in default of payment, to simple imprisonment [3] for a term which may extend to one month, unless such fine be sooner paid.

[1] 6 All. 103.

[2] For form of warrant of commitment see Sched. V. No. 38.

[3] Such imprisonment does not relieve the offender from liability to have the fine levied by distress and sale, 3 Suth. Cr. Letters, 21.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section[1].

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence[2]. Record in such cases.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate. Procedure where Court considers that case should not be dealt with under s. 480.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482[3]. When Registrar to be deemed a Civil Court.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his sub- Discharge of offender on submission or apology.

[1] An appeal lies from orders under it, sec. 486 infra.

[2] 4 Mad. H. C. 229.

[3] 13 Ben. Appx. 40.

mission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him [1], or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant [2] under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid [3] may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

[1] 3 Mad. 271.

[2] See form of warrant, Sched. V. No. 39.

[3] See sec. 483.

487. Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon and the Presidency Magistrates[1], shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority[2], or is brought under his notice[3] as such Judge or Magistrate in the course of a judicial proceeding.

Certain Judges and Magistrates not to try offences referred to in s. 195 when committed before themselves.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN[4].

488. If any person having sufficient means neglects or refuses to maintain his wife[5] or his legitimate or illegitimate child[6] unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class[7] may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate[8], not exceeding fifty rupees in the whole, as such Magis-

Order for maintenance of wives and children.

[1] 1 Mad. 305.

[2] The District Court and Sessions Court are essentially distinct Courts, though presided over by the same officer. There is nothing, therefore, to debar a District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery, from trying the offence in his capacity of Sessions Judge, 6 Bom. 479 (on sec. 473 of the Code of 1872).

[3] 4 Ben. App. Jur. Cr. 11.

[4] So an Assistant Sessions Judge is a different Court from the Sessions Judge, 11 Bom. H. C. 98.

[5] As to what is a 'wife' for the purpose of this section, see 4 N. W. P. 128 (*Karao*-marriage among Játs). The question is, whether the form of marriage that has been gone through is sufficient to enable the offspring of the union to inherit.

[6] No order can be passed under this section for the maintenance of a fœtus of which a woman is believed to be pregnant, 3 N. W. P. 70, and 'child' does not include 'step-child.' There is no law in India like 4 & 5 Wm. IV. c. 76. sec. 57.

[7] i. e. the Magistrate of the particular area in which the husband or father resides, 9 Bom. 45.

[8] The Magistrate may alter this, from time to time, under sec. 489. But he cannot in the first instance make an order at a progressively increasing rate, 2 N. W. P. 454: 12 Cal. 535.

trate thinks fit, and to pay the same to such person as the Magistrate from time to time directs[1].

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant[2] for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment[3] for a term which may extend to one month[4]:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him[5], and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her[6]; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery[7], or that without sufficient reason she refuses to live with her husband, or that

[1] The Magistrate cannot enter into any question as to the lawful guardianship of a child, 4 Cal. 374. Where the claim for maintenance had been released, the Magistrate should not enforce the order, 10 Mad. 13.

It will be observed that sec. 488, like the Contract Act, sec. 68, illustration *b*, assumes that husbands and parents are under a legal obligation to support their wives and children. That a wife residing with her husband has a right to be maintained by him, see 9 Bom. 45. But, apart from the personal laws of the Natives, there seems to be in India no express civil obligation on the part of a father to maintain his child. So in England, *Bazeley* v. *Forder*, L. R., 3 Q. B. 559, per Cockburn C.J.

[2] See form, Sched. V. No. 41.

[3] simple or rigorous.

[4] Such a sentence is absolute and the imprisonment does not cease on payment, 8 Mad. 70. See also 9 All. 240. For a form of warrant of imprisonment on failure to pay maintenance, and of a warrant to enforce the payment by distress and sale, see Sched. V. Nos. 40, 41.

[5] A Hindú must offer to 'maintain' his wife as part of his family and to 'live' with her as a husband lives with his wife, 6 Mad. 371, 372.

[6] A Hindú husband's marriage of a second wife is not a sufficient ground, 7 Mad. 187.

[7] 8 Bom. Cr. Ca. 124; 5 All. 224.

they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chaper shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases[1].

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Enforcement of order of maintainance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable[2] by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due[3].

[1] A Hindú marriage of a man reverting from Christianity to Hindúism is not void in consequence of a previous Christian marriage, 4 Mad., H. C. Rulings, iii. The Hindú as well as the Christian wife of such a person is therefore entitled to maintenance under this section.

As to the High Court's power to revise orders made under this section, see 20 Suth. Cr. 58, 5 Bom. H. C., Cr. Ca. 81.

Of course section 488 does not deprive a wife of any remedy in the Civil Courts which she would otherwise have had against her husband, 6 Suth. Civ. R. 57, col. 2.

[2] This does not deprive the Magistrate of his jurisdiction under section 488. When the person against whom the order is made is beyond his jurisdiction he may, in his discretion, issue a warrant under section 488, or refer the applicant to a Magistrate having jurisdiction under section 490; 4 Mad. 230.

[3] The order does not deprive a Muhammadan husband against whom it is made of his right to divorce his wife, and after such divorce the order cannot be enforced (7 Bom. 180), except as to the interval between the date of the order and the divorce (19 Suth. Cr. 73), and except during the period of *iddat*, i. e. three months in the case of a non-pregnant woman; the period of gestation, if she be pregnant, 5 All. 226. More as to orders of maintenance of Muhammadan wives, 8 Bom. H. C., Cr. Ca. 95: 5 Cal. 558: 8 Cal. 76. Under the Shia law, *muta* wives are not entitled to maintenance; but this does not affect their statutory right under chap. xxxvi, 8 Cal. 736.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS.*

Power to issue directions of the nature of a *habeas corpus.*

491. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment[1].

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section[2].

Saving of laws relating to State prisoners.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

[1] As to the power of the late Supreme Courts to grant writs of *habeas corpus*, see 1 Knapp, 1. This chapter seems not to affect the English prerogative writ of *habeas corpus ad subjiciendum*, which runs into all parts of British India. The prohibition in 25 & 26 Vic. c. 20 does not apply, as there never has been a court in British India 'having authority to grant and issue the said writ and to ensure the due execution thereof, *throughout such . . . dominion.*'

[2] See the rules made by the High Court at Fort William under the corresponding section of Act X of 1875, *Gazette of India*, Part II, 12 Aug. 1876, p. 397.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors[1].

Power to appoint Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions[2].

Public Prosecutor may plead in any Court.

Pleaders under his direction.

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government[3] may, with the consent of the Court, in cases tried by jury before the return

Effect of withdrawal from prosecution.

[1] Sec. 4, cl. (*m*), supra, p. 62. The Bengal Government has appointed all Government pleaders in the Lower Provinces to be public prosecutors, *Calcutta Gazette*, 23 Nov. 1881, Part I, p. 1026.

[2] As to his duty to call and examine witnesses, see 7 All 904, 8 Cal. 121; and as to the mode in which he should perform his functions, see 8 Bom. H. C., Cr. Ca. 126, 153, per Westropp C.J.

[3] but not one appointed under sec. 492 by the District Magistrate or Subdivisional Magistrate, 8 All. 291.

of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Permission to conduct prosecution.

495. Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council[1]; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted[2].

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence[3] is arrested or detained without warrant by an officer in charge of a police-station[4], or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person,

[1] Act X of 1886, sec. 13. See 13 Suth. Cr. 18.

[2] This section did not supersede the provision of Bom. Act VII of 1867, sec. 23, which authorised a police officer to prosecute offenders up to final judgment. But that provision was repealed by Act X of 1886, sec. 20.

[3] Sec. 4, cl. (*r*), supra, p. 63.

[4] Sec. 4, cl. (*o*), supra, p. 63.

discharge him on his executing a bond without sureties for his appearance as hereinafter provided [1].

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person [2] be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Bond of accused and sureties.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be [3].

[1] For forms see Sched. V. No. 42. And see sec. 513, infra, as to taking a deposit in lieu of a bond.

[2] even a convicted person; see 1 All. 151 as to the former law.

[3] See form of bond, Sched. V. No. 42.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Discharge from custody.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail[1], and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Discharge of sureties.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

[1] See form, Sched. V, No. 43.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience[1] which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When attendance of witness may be dispensed with.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer[2].

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code[3].

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attend-

Commission where witness in Presidency-town.

[1] This empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country, ought not to appear in public, 5 All. 92. The Calcutta High Court has been supposed to have held that a *pardanashin* is of right exempted from personal attendance in Court (ibid., citing 4 Cal. 20). But this is only the reporter's headnote, and refers to mere witnesses. Certainly there is no such exemption where she is a complainant.

[2] The Courts have no power to issue commissions out of the jurisdiction except in cases provided for by this section, 5 Bom. 338.

[3] Chapter xxi, supra.

ance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application[1]; and the District Magistrate may either issue a commission in the manner hereinbefore[2] provided or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions[3], be read in evidence in the case by either party, and shall form part of the record[4].

[1] He should also state the nature of the alleged offence, the state of the proceedings, and the name of the witness; see N.Y. Code of Crim. Proc. § 639.

[2] Sec. 503.

[3] i. e. the same objection may be taken to a question in the interrogatories, or to an answer in the deposition, as if the witness had been examined orally in court.

[4] If in taking evidence by commission a document is tendered and ob-

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjournment of inquiry or trial.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused[1], may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness[2].

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

510. Any document purporting to be a report[3] under the hand of any[4] Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

Previous conviction or acquittal how proved.

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

jected to on any ground, the opposite party is not thereby precluded from objecting to the document at the trial on any other ground, 9 Cal. 939.

[1] 8 Cal. 739, 745.

[2] Whether he is called or not, his deposition is admissible, 8 Cal. 739. That a medical officer's report not given on oath is not evidence has often been decided in India (see 11 Suth. Cr. 2, col. 2: 12 Suth. Cr. 25). But in giving evidence he may refresh his memory by referring to a report which he has made of his *post mortem* examination, 9 Cal. 455.

[3] i.e. the original, not a copy, 6 Ben. Appx. 122.

[4] Act X of 1886, sec. 14. See 10 Cal. 1026, by which this amendment was suggested.

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. If it be proved[1] that an accused person has absconded, and that there is no immediate prospect of arresting him[2], the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable[3].

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognisance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code[4] has been taken, or of

[1] i.e. alleged, tried, and established, 10 Cal. 1097.

[2] See 21 Suth. Cr. 12.

[3] 8 All. 672, 675. See the Evidence Act, sec. 33, and 6 All. 224.

[4] There is no provision in the Code authorising a police-officer to take security for the production of any person before the police. Such a bond is void, and there is no power to alter it under this section, 11 Cal. 78.

the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court to the satisfaction of such Court,

that such bond has been forfeited [1], the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid [2].

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant [3] for the attachment and sale of the moveable property belonging to such person [4].

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate [5] within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months [6].

The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

515. All orders passed under section 514 [7] by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, or revision orders under s. 514.

[1] Due execution, as well as forfeiture, must be proved, 11 Cal 78. In the case of a bond to keep the peace the Magistrate must record evidence in the presence of the person bound, proving that he was about to do something which would cause a breach of the peace, 3 Ben. Appx. 155, and the person bound ought to have had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued, 4 Cal. 865.

[2] See forms of notice, Sched. V. Nos 45, 46, 49.

[3] See forms, Sched. V. Nos. 47, 50, 52.

[4] In the case of a surety, he must be called on to show cause why he should not pay the penalty mentioned in his bond, and the record must clearly show that he had such notice, 15 Suth. Cr. 82.

[5] Act X of 1886, sec. 4.

[6] See forms of warrant of imprisonment, Sched. V. Nos. 51, 53.

[7] even in the case of a bond to keep the peace. See 2 Mad. 169 as to the former law.

Power to direct levy of amount due on certain recognisances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit[1] for the disposal of any document or other property produced before it[2] regarding which any offence appears to have been committed, or which has been used for the commission of any offence[3].

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay[4]) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

Explanation.—In this section the term 'property' includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have

[1] This discretionary power would not of course enable the Court to bestow the property in charity, Mad. H. C. Pro. 20 July, 1875, cited by Henderson, p. 457.

[2] 19 Suth. Cr. 3.

[3] For example, counterfeit coins, instruments used for coining, false weights and measures. If the District Magistrate thinks such an order improper, he should direct it to be stayed, under sec. 520, 8 Bom. 575.

[4] See sec. 525, infra.

been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise[1].

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Order may take form of reference to District or Sub-divisional Magistrate.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him[2].

Payment to innocent purchaser of money found on accused.

520. Any Court of appeal[3], confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter or annul such order.

Stay of order under section 517, 518 or 519.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

Destruction of obscene, libellous and other matter.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274, or

[1] It includes property produced by a witness as well as property seized by the police or found in possession of the accused. See 9 Mad. 449, 12 Bom. H. C. 217. But it does not include a stolen cow's calf born a year after the theft, 10 Mad. 25. As to stolen currency notes which had been delivered to *bona fide* holders for value, see 3 Cal. 379. As to money, 7 Mad. H. C. 233.

[2] Founded on 30 & 31 Vic. c. 35. s. 9.

[3] This does not necessarily mean a Court before which an appeal is pending, 3 Cal. 379: 9 Mad. 449.

section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same[1].

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Procedure by police upon seizure of property taken under s. 51 or stolen.

523. The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof[2], or if such person cannot be ascertained, respecting the custody and production of such property[3].

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the magistrate may detain it, and shall, in such case, issue a proclamation[4] specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation[5].

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the

[1] 23 Suth. Cr. 54, per Phear J.

[2] Not necessarily the person from whom the property was taken, 8 Bom. 338. Compare 2 & 3 Vic. c. 71. s. 29. Of course the order does not conclude the right of any one, and the real owner may sue the holder of the property, 9 Bom. 131.

[3] Statements made to the police by the accused as to the ownership of the property are admissible under this section, 9 Bom. 131.

[4] See sec. 87 and 2 All. 276.

[5] The Magistrate must summon the witnesses named by the claimant and take due steps to secure their attendance, 18 Suth. Cr. 5.

Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale [1].

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto [2], or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice [3],

it may order—

[1] As to orders made *bona fide* under this section by Magistrates not empowered to make them, see sec. 529 (*h*).

[2] 9 Bom. 172, 333 : 6 Cal. 491 : 7 Cal. 322 : 5 Mad. H. C. 212 : 9 Mad. 356. Before transferring a case against the wish of the accused, the High Court requires the very best evidence that a fair trial cannot be had where the case is ordinarily triable, 6 Cal. 491.

[3] Inserted by Act III of 1884, sec. 11. Clause (*e*) would clearly cover such a case as that in 9 Bom. 333, where the High Court transferred to itself a case of defamation from the Cantonment Magistrate's Court at Sikandarábád on the ground that no machinery for a trial by jury existed at Sikandarábád.

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority[1] to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself; or

(4) that an accused person be committed for trial to itself or to a Court of Session[2].

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation[3].

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under sec. 526.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

Adjournment on application under section 526.

526 A. If in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant, or the accused notifies to the Court before which the

[1] 9 Mad. 356.

[2] Inserted by Act III of 1884, sec. 11.

[3] 1 Cal. 219: 8 Cal. 63: 9 Cal. 397.

case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal [1].

Power of Governor General in Council to transfer criminal cases and appeals.

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Sub-divisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case [2] from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same [3].

Power to authorise District Magistrate to withdraw classes of cases.

The Local Government may authorise the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases [4].

A Magistrate making an order under this section shall record in writing his reason for making the same [5].

[1] Inserted by Act III of 1884, sec. 11.

[2] 8 Cal. 851.

[3] When a case under trial is removed under this section, the whole proceedings must commence *de novo*, 24 Suth. Cr. 53.

[4] See the *Panjab Gazette*, 8th Feb. 1883, Part I, p. 52, and the *British Burma Gazette*, 1873, Part II, p. 5.

[5] Added by Act III of 1884, sec. 13. Where a Magistrate not empowered in this behalf erroneously but in good faith withdraws a case and tries it himself under sec. 528, see sec. 529.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely—

(*a*) to issue a search-warrant, under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognisance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338 [1];

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely)—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*). makes an order, under section 133, as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII;

[1] 8 Cal. 560.

(*k*) takes cognisance, under section 191, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises under section 515, an order passed under section 514;

(*p*) tries an offender[1];

(*q*) tries an offender summarily[2]; or

(*r*) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court[3] shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Subdivision or other local area[4], unless it appears that such error occasioned a failure of justice.

When irregular commitments may be validated.

532. If any Magistrate or other authority[5] purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority[6].

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate[7].

533. If any Court before which a confession or other

[1] If the offender is acquitted he may be retried at once, 8 Bom. 307.

[2] 4 Cal. 18.

[3] This includes an order of a Magistrate committing a case to a Court of Session having no territorial jurisdiction, 8 Bom. 312.

[4] See 13 Ben. Appx. 4.

[5] 9 Bom. 299.

[6] 8 Cal. 985. And see 7 Cal. 662, where the High Court refused to set aside a conviction on an improper commitment.

[7] See 21 Suth. Cr. 37; 4 Mad. 227; 5 Mad. 23.

Non-compliance with provisions of s. 164 or 364.

statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement; it shall take evidence that such person duly made the statement recorded[1]; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Omission to ask question prescribed by s. 454, cl. 2.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding[2].

Sentence when reversible by reason of error in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction[3] shall be reversed or altered under Chapter XXVII, or on appeal or revision, on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings

[1] For a case in which it was held unnecessary to take evidence under this section, see 14 Cal. 539, following 8 Cal. 618 n.

[2] See 3 Cal. 765.

[3] i.e. in respect of the particular offence charged, 10 Bom. 320, 325. As to orders etc. of Magistrates and Courts without jurisdiction, see secs. 530, 531, 532, etc.

before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195[1], or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury;

unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice[2].

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto. Distress not illegal for defect in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorised to take affidavits or affirmations in Scotland. Courts and persons before whom affidavits may be sworn.

[1] As to want of sanction under sec. 132 or 197, see 9 Bom. 288.

[2] 14 Cal. 128. See for illustrations 1 Suth Cr. 16 (Deputy Magistrate proceeding by warrant instead of summons): 19 Suth. Cr. 7 (omission by Deputy Magistrate to draw up charge): 1 All. 610 (acquittal by Court sitting with assessors without asking their opinion): 11 Bom. 237 (omission of prisoner's pleader to object to admissibility of his statement): 7 Cal. 662 (Sessions Judge's wrong order to commit person discharged by Deputy Magistrate, without first giving him opportunity to show cause. But see 14 Ben 54, where the Magistrate omitted to hold a preliminary inquiry on a charge under sec. 307 of Penal Code; 3 All. 392, where the trying Magistrate rejected the prisoner's application that a certain person might be examined on his behalf, and did not record the reasons for rejection; and 13 Cal 272, where a Presidency Magistrate passed a sentence of six months' rigorous imprisonment, but omitted to record his reasons for the conviction.

Power to summon material witness, or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined [1]; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case [2].

Power to appoint place of imprisonment.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined [3].

Removal to criminal jail of persons confined in civil jail.

541 A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(2) When a person is removed to a criminal jail under subsection (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure [4]; or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure [5].

Power of Presidency Magistrate

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869 [6], any Presidency Magistrate desirous of

[1] Compare the Evidence Act, sec. 165. The Court should not refuse to allow the prisoner to cross-examine a witness called by it, 5 Cal. 614.

[2] 8 All. 668.

[3] Notifications under this section or the corresponding section of the Code of 1872 have been issued as to European British subjects by the Local Governments of Madras, Bombay, the Lower Provinces and the Panjáb. All central jails in Bengal and the central prison at Lucknow have been appointed as places to which persons under sentence of transportation may be sent. See Macpherson's *Lists*, 1884, pp. 209, 481, and Henderson, pp. 477, 478.

[4] Act XIV of 1882, infra.

[5] Act X of 1886, sec. 15.

[6] Act XV of 1869.

examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

to order prisoner to be brought up for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement [1], he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to interpret truthfully.

544. Subject to any rules made by the Local Government [2] with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order [3] the whole or any part of the fine recovered to be applied—

Power of Court to pay expenses or compensate out of fine.

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation [4] for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

[1] See sec. 361 supra, and the Oaths Act, X of 1873, sec. 5.

[2] See the Notifications by the Local Governments of Bombay, Bengal, the N. W. Provinces, the Panjáb, Oudh, Burma, Coorg, Assam, Macpherson's *Lists*, 1884, pp. 216, 233, 340, 348, 430, 461, 491, 552, 576, 648, 686.

[3] 2 Suth. Cr. 58, col. 2: 11 Suth. Cr. 53, col. 2.

[4] to the person who has suffered by the offence, 6 Suth. Cr. 93; but not, for example, to an amín for the purpose of defraying the expense of deputing him to restore destroyed landmarks, ibid.; nor to the heirs of one who has been killed, 10 Suth. Cr. 39; nor to the innocent purchaser of property found to have been stolen, 6 Mad. 286: 4 Mad. H. C., Appx. xxviii: 7 Mad. H. C., Appx. xiii.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be considered in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account[1] any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money[2] (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order[3] passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to Military authorities of persons liable to be tried by Court-martial.

549. The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer or any body of troops stationed or employed at any such place, use his utmost

[1] i. e. take into consideration, 22 Suth. Civ. 336.

[2] e. g. maintenance, sec. 481.

[3] e. g. a prosecutor whose charge is dismissed, 8 Cal. 166.

endeavours to apprehend and secure any person accused of such offence.

550. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station[1].

Powers of superior officers of police.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose[2], he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to compel restoration of abducted females.

552. Whenever any person causes a police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to person groundlessly given in charge in Presidency-town.

In such cases, if more persons than one are arrested or complained against[3], the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

553. With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the

Power of chartered High

[1] 7 Bom. 42.

[2] Some words such as 'within the local limits of his jurisdiction' have been here omitted *per incuriam*.

[3] The words 'or complained against' were left in *per incuriam*.

Courts to make rules for inspection of records.

previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Forms.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require[1], shall be used for the respective purposes therein mentioned.

Case in which Judge is personally interested.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested[2], and no Judge or Magistrate shall

[1] 10 Cal. 937.

[2] This agrees with the English common-law that a justice who has any interest (no matter how small) in the result of proceedings is disqualified from acting, *The Queen* v. *Meyer*, L. R., 1 Q. B. D. 173, 176, per Blackburn J.

In 2 Cal. 23 the Court thought that a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and he himself discovered the offence and was one of the principal witnesses for the prosecution. And see 3 Cal. 622. Where a servant is the complainant, it is inex-

hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner[1].

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter[2]. Power to decide language of Courts.

557. All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised, from time to time, as occasion requires. Powers of Government exercisable from time to time.

558. The provisions of this Code shall apply, so far as may be[3], to all cases pending in any Criminal Court when this Code comes into force. Pending cases.

559. A public servant having any duty to perform in connection with the sale of any property under this Code[4] shall not purchase or bid for the property[5]. Officers concerned in sales not to purchase.

pedient that his master should try the case, 9 Bom. 172. See also 8 Ben. 422, where the Magistrate tried a case instituted by him as Sub-registrar. But see 4 Q. B. D. 332: 6 Q. B. D. 168.

[1] 10 Cal. 1030: Ben. Act III of 1885, sec. 141. But a conviction of an offence against a municipal regulation, by a Bench which includes a *salaried* officer of the municipality, is bad, 10 Cal. 194.

[2] Thus Canarese is the language of the criminal Courts in the district of Belgaum, Urdu of those in the Panjáb; and see the Notifications in Macpherson's *Lists*, 1884, pp. 216, 481, 504, 686.

[3] This does not authorise the application of the Code so as to vitiate a trial, and sec. 6 of the General Clauses Act (supra, vol. i. p. 490) prevents proceedings already commenced being affected by the repeal of the old Code, 6 Mad. 338.

[4] secs. 88, 524, 525.

[5] Added by Act X of 1886, sec. 16.

BENGAL SECRETARIAT LIBRARY.

SCHEDULE I.

ENACTMENTS REPEALED.

(a).—*Statute.*

Year, reign and chapter.	*Title.*	*Extent of repeal.*
13 Geo. III, chapter 63.	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(b.)—*Acts of the Governor General in Council.*

Number and year.	*Subject.*	*Extent of repeal.*
XXIII of 1840	Execution of process	So much as has not been repealed.
XLV of 1860	Penal Code	The illustrations to section 214.
V of 1861 ...	Police Act	Section 6 and the last nine words of section 24[1].
		Section 35, down to and including the words 'Provided that.'
XVIII of 1862	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI of 1864 ...	Whipping	Section 7.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulation XX of 1825.
X of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Bengal Regulation XX of 1825.

[1] The power which Act V of 1861, sec. 24, confers on the police to lay informations and apply for summonses and other legal processes, remains intact.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—*continued.*

(*b*).—*Acts of the Governor General in Council*—continued.

Number and year.	*Subject.*	*Extent of repeal.*
X of 1875 ...	High Courts' Criminal Procedure.	The whole Act, except section 144 and so much of section 146 as relates to informations[1].
XX of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX of 1825.
XVIII of 1876	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57[2].
XXI of 1879	Extradition	Chapter III.
X of 1881 ...	Coroners	Sections 8 and 9.

(*c*).—*Regulations.*

Number and year.	*Subject.*	*Extent of repeal.*
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial	So much as has not been repealed.
III of 1872 ...	Santhál Parganas Settlement...	So far as it relates to Act X of 1872.
IX of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II of 1869, X of 1872, and XI of 1874.
III of 1877 ...	Ajmer Laws	So far as it relates to Bengal Regulation XX of 1825.

(*d*).—*Act of the Governor of Fort St. George in Council.*

Number and year.	*Subject.*	*Extent of repeal.*
VIII of 1867	Police	Section 9.

[1] See the excepted portions, infra, Appendix E.

[2] See the excepted section, infra, Appendix to the Court Fees Act.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively 'Offence' and 'Punishment under the Indian Penal Code,' are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even

SCHEDULE II.

CHAPTER V.

CHAPTER V.—ABETMENT.			
1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto ... ...
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto	Ditto ... ...
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto	Ditto ... ...
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	Ditto ...
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	Ditto ... ...
	If an act which causes harm be done in consequence of the abetment.	Ditto	Ditto ... ...
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	Ditto ... ...

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.			
5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II *continued*

CHAPTER V *continued*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	Ditto ... ...
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be punishable with death or transportation for life.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...

CHAPTER VI.

CHAPTER VI.—OFFENCES

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant.

SCHEDULE II *continued.*

CHAPTER V *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.

AGAINST THE STATE.

Not bailable.	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.

SCHEDULE II *continued.*

CHAPTER VI *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
121 A	Conspiring to commit certain offences against the State.	Shall not arrest without warrant.	Warrant ... ...
122	Collecting arms etc. with the intention of waging war against the Queen.	Ditto	Ditto ... .
123	Concealing with intent to facilitate a design to wage war.	Ditto	Ditto ... ...
124	Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Ditto	Ditto ... ...
124 A	Exciting, or attempting to excite, disaffection.	Ditto	Ditto ... ...
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto	Ditto ... ...
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto	Ditto ... ...
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto	Ditto ... ...
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto	Ditto ... ...
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	Ditto ... ...
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	Ditto ... ...
131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER VI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant ... ...
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto	Ditto ... ...
134	Abetment of such assault, if the assault is committed.	Ditto	Ditto ... ...
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto	Ditto ... ...
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto	Ditto ... ...
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons... ...
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ... ...
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto	Summons... ...

CHAPTER VIII.

CHAPTER VIII.—OFFENCES AGAINST

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons... ...
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	Warrant ... ...
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	Ditto ... ...
147	Rioting	Ditto	Ditto ... ...
148	Rioting, armed with a deadly weapon.	Ditto	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER VI *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable	Not compoundable.	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees... ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.

THE PUBLIC TRANQUILLITY.

Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER VIII *continued*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto	Summons... ...
152	Assaulting or obstructing public servant when suppressing riot, etc	Ditto . ..	Warrant . ..
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto	Ditto ... ..
	If not committed	Shall not arrest without warrant.	Summons .
154	Owner or occupier of land not giving information of riot, etc.	Ditto	Ditto ... .
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	Ditto ... ..
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto ... ...
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ... .
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto ... ...
	Or to go armed.	Ditto	Warrant ... ...
160	Committing affray.	Shall not arrest without warrant	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence is bailable or not.	Not compoundable.	The same as for the offence.	The Court by which the offence is triable.
Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ..	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

SCHEDULE II *continued.*

CHAPTER IX.

CHAPTER IX.—OFFENCES BY

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto	Ditto ... ...
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto	Ditto ... ...
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto	Ditto ... ...
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto ... ...
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	Ditto ... ...
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	Ditto ... ...
168	Public servant unlawfully engaging in trade.	Ditto	Ditto ... ...
169	Public servant unlawfully buying or bidding for property.	Ditto	Ditto ... ...
170	Personating a public servant ...	May arrest without warrant.	Warrant ... ...
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	Summons ...

OR RELATING TO PUBLIC SERVANTS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...
	If summons or notice require attendance in person etc. in a Court of Justice.	Ditto	Ditto ... ...
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto	Ditto ... ...
	If summons etc. require attendance in person etc. in a Court of Justice.	Ditto	Ditto ... ...
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto	Ditto ... ...
	If the order require personal attendance etc. in a Court of Justice.	Ditto	Ditto ... ...
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	Ditto ... ...
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	Ditto ... ...
176	Intentionally omitting to give notice or information to a public servant legally bound to give such notice or information.	Ditto	Ditto ... ...
	If the notice or information required respects the commission of an offence, etc.	Ditto	Ditto ... ...

AUTHORITY OF PUBLIC SERVANTS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X. *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
177	Knowingly furnishing false information to a public servant.	Shall not arrest without warrant.	Summons ...
	If the information required respects the commission of an offence, etc.	Ditto	Ditto ... ...
178	Refusing oath when duly required to take oath by a public servant.	Ditto	Ditto ... ...
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	Ditto ... ...
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	Ditto ... ...
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto	Warrant ... ...
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	Summons ...
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	Ditto ... ...
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	Ditto ... ...
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	Ditto ... ...
186	Obstructing public servant in discharge of his public functions.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
187	Omission to assist public servant when bound by law to give such assistance.	Shall not arrest without warrant.	Summons ...
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Ditto	Ditto ... ...
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto	Ditto ... ...
	If such disobedience causes danger to human life, health or safety, etc.	Ditto	Ditto ... ...
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto	Ditto ... ...
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto ... ...

CHAPTER XI.

CHAPTER XI.—FALSE EVIDENCE AND

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ... ...
	Giving or fabricating false evidence in any other case.	Ditto	Ditto ... ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto ... ...
	If innocent person be thereby convicted and executed.	Ditto	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER X *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

OFFENCES AGAINST PUBLIC JUSTICE.

CHAPTER XI.

Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Death, or as above.	Ditto.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Shall not arrest without warrant.	Warrant ... ...
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	Ditto ... ...
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto ... ...
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto ... ...
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto ... ...
200	Using as true any such declaration known to be false.	Ditto	Ditto ... ...
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto	Ditto ... ...
	If punishable with transportation for life or imprisonment for ten years.	Ditto	Ditto ... ...
	If punishable with less than 10 years' imprisonment.	Ditto	Ditto ... ...
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	Summons ...
203	Giving false information respecting an offence committed.	Ditto	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	The same as for the offence	Court of Session.
According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
204	Secreting or destroying any document to prevent its production as evidence.	Shall not arrest without warrant.	Warrant ... ...
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	Ditto ... ...
206	Fraudulent removal or concealment etc. of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto ... ...
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto ... ..
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	Ditto ... ...
209	False claim in a Court of Justice.	Ditto	Ditto ... ...
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	Ditto ... ...
211	False charge of offence made with intent to injure.	Ditto	Ditto ... ...
	If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto ... ...
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto	Ditto ... ...
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ... ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto ..	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class[1].
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

[1] Act X of 1886, sec. 17.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If punishable with imprisonment for 1 year and not for 10 years.	May arrest without warrant.	Warrant ... ...
213	Taking gift etc. to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ... ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for less than 10 years.	Ditto	Ditto .. ...
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto	Ditto ... ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for less than 10 years.	Ditto	Ditto ... ...
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	Ditto ... ...
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ... ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for 1 year, and not for 10 years.	Ditto	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XI *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant ... ...
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto	Ditto ... ...
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto ... ...
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	Ditto ... ...
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ..
	If with imprisonment for less than 10 years.	Ditto	Ditto ... ...
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto	Ditto ... ...
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto	Ditto ... ...
	If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Ditto	Ditto ... ...
223	Escape from confinement negligently suffered by a public servant.	Ditto	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonmnnt of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ... ..
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto	Ditto ... ...
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ...
	If charged with a capital offence ...	Ditto	Ditto .. ...
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto	Ditto ... ...
	If under sentence of death ...	Ditto	Ditto . ...
225A	Omission to apprehend or sufferance of escape, on part of public servant in cases not otherwise provided for—		
	(*a*) in case of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ... ...
	(*b*) in case of negligent omission or sufferance	Ditto	Summons ...
225B	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant
226	Unlawful return from transportation.	Ditto . . .	Ditto ...
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for two years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class[1].
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto[1].
Not bailable.	Ditto ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

[1] Act X of 1886, sec. 18.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Shall not arrest without warrant.	Summons ...
229	Personation of a juror or assessor ...	Ditto	Ditto ... ...

CHAPTER XII.

CHAPTER XII.—OFFENCES RELATING

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ... ...
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto ... ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	Ditto ... ...
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	Ditto ... ...
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	Ditto ... ...
	If Queen's coin	Ditto	Ditto ... ...
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	Ditto ... ...
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	Ditto ... ...
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
Ditto ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

TO COIN AND GOVERNMENT STAMPS.

Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto	Ditto .	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ..	Ditto .	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ..	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto .	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ..	Ditto .	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto .	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
Ditto ...	Ditto ..	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ..	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

SCHEDULE II. *continued.*

CHAPTER XII *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
239	Having any counterfeit coin known to be such when it came into possession, and delivering etc. the same to any person.	May arrest without warrant.	Warrant ...
240	The same with respect to the Queen's coin.	Ditto	Ditto ... ...
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	Ditto ... ...
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto ... ...
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	Ditto ... ...
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	Ditto ... ...
245	Unlawfully taking from a Mint any coining instrument.	Ditto	Ditto ... ...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	Ditto ... ...
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	Ditto .. ...
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto ... ...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	Ditto ... ...
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	Ditto ... ...
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto	Ditto ..
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ..
255	Counterfeiting a Government stamp.	Ditto ..	Ditto
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	Ditto
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto . .	Ditto ...
258	Sale of counterfeit Government stamp.	Ditto	Ditto .. .
259	Having possession of a counterfeit Government stamp.	Ditto	Ditto . .
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	Ditto . ...
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	Ditto . . ...
262	Using a Government stamp known to have been before used.	Ditto . .	Ditto . ...
263	Erasure of mark denoting that stamp has been used.	Ditto .	Ditto ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ..	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
Bailable ..	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ..	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ..	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ..	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ..	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XIII.

CHAPTER XIII.—OFFENCES RELATING

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...
265	Fraudulent use of false weight or measure.	Ditto	Ditto ... ...
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto ... ..
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto ... ...

CHAPTER XIV.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	Ditto ... ...
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ... ...
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto	Ditto ... ...
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto	Ditto ... ...
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	Ditto ... ...
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	Ditto ... ...
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto ... ...

TO WEIGHTS AND MEASURES.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

West Bengal Secretariat Library

SCHEDULE II *continued.*

CHAPTER XIV *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons ...
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ... ...
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	Ditto ... ...
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto	Ditto .. ...
281	Exhibition of a false light, mark or buoy.	Ditto	Warrant ... ...
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	Summons ...
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto	Ditto ... ...
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	Ditto ... ...
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	Ditto ... ...
286	So dealing with any explosive substance.	Ditto	Ditto ... ...
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ... ...
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	Ditto ... ...
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine of 200 rupees.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Any Magistrate.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Any Magistrate.

SCHEDULE II *continued.*

CHAPTER XIV *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
290	Committing a public nuisance ...	Shall not arrest without warrant.	Summons ...
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...
292	Sale etc. of obscene books, etc. ...	Ditto	Warrant ...
293	Having in possession obscene book etc. for sale or exhibition.	Ditto	Ditto ... ...
294	Obscene songs	Ditto	Ditto ... ...
294A	Keeping a lottery office	Shall not arrest without warrant.	Summons ...
	Publishing proposals relating to lotteries.	Ditto	Ditto ... ...

CHAPTER XV.

CHAPTER XV.—OFFENCES

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto	Ditto ... ...
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto ... ...
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XIV *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Fine of 200 rupees ...	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto .	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto .	Ditto.
Ditto ...	Ditto ..	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ..	Ditto ...	Fine of 1,000 rupees ...	Ditto.

CHAPTER XV.

RELATING TO RELIGION.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Compoundable.	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVI.

CHAPTER XVI.—OFFENCES

Of Offences

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
302	Murder	May arrest without warrant.	Warrant ... ..
303	Murder by a person under sentence of transportation for life.	Ditto	Ditto ... ..
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Ditto	Ditto ... ...
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Ditto	Ditto ... .
304 A	Causing death by rash or negligent act.	Ditto	Ditto ... ...
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto	Ditto ... ...
306	Abetting the commission of suicide	Ditto	Ditto ... ...
307	Attempt to murder	Ditto	Ditto ... ...
	If such act cause hurt to any person	Ditto	Ditto ... ...
	Attempt by life-convict to murder, if hurt is caused.	Ditto	Ditto ... ...
308	Attempt to commit culpable homicide.	Ditto	Ditto ... ...
	If such act cause hurt to any person	Ditto	Ditto ... ...
309	Attempt to commit suicide ...	Ditto	Ditto ... ...
311	Being a thug	Ditto	Ditto ... ...

AFFECTING THE HUMAN BODY.

affecting Life.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
Ditto ...	Ditto ...	Death	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
Ditto ...	Ditto ...	Death, or as above ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life and fine.	Court of Session.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
	Of the Causing of Miscarriage; of Injuries to Unborn Children;		
312	Causing miscarriage	Shall not arrest without warrant.	Warrant .
	If the woman be quick with child...	Ditto	Ditto ... .
313	Causing miscarriage without woman's consent.	Ditto	Ditto ... .
314	Death caused by an act done with intent to cause miscarriage.	Ditto	Ditto ... ...
	If act done without woman's consent	Ditto	Ditto ... ...
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto	Ditto ... ...
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto	Ditto ... ...
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ... ...
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto ... ...
	Of Hurt.		
323	Voluntarily causing hurt	Shall not arrest without warrant.	Summons ...
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ... ...

of the Exposure of Infants; and of the Concealment of Births.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto	Transportation for life, or as above.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Hurt.

Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
325	Voluntarily causing grievous hurt	May arrest without warrant.	Summons ...
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	Ditto ... ...
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto	Warrant ... ...
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto	Ditto ... ..
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto	Ditto ... ...
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto ... ...
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Ditto	Ditto ... ...
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	Ditto ... ...
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto	Ditto ... ...
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons ...
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued*

CHAPTER XVI *continued*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
336	Doing any act which endangers human life or the personal safety of others.	May arrest without warrant.	Summons ..
337	Causing hurt by an act which endangers human life, etc.	Ditto	Ditto ... ...
338	Causing grievous hurt by an act which endangers human life, etc.	Ditto	Ditto ...
			Of Wrongful Restraint
341	Wrongfully restraining any person	May arrest without warrant.	Summons ..
342	Wrongfully confining any person ...	Ditto	Ditto ... ..
343	Wrongfully confining for three or more days.	Ditto	Ditto ... ...
344	Wrongfully confining for ten or more days.	Ditto	Ditto .. .
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ... ..
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ... ..
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.	Ditto	Ditto ... ...
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto	Ditto .. ..

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.
and Wrongful Confinement.			
Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
Ditto ..	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ..	Ditto	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	3 Whether a warrant or a summons shall ordinarily issue in the first instance.
			Of Criminal
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ... ...
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto ... ...
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ... ...
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto ... ..
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...
			Of Kidnapping, Abduction,
363	Kidnapping	May arrest without warrant.	Warrant ... ...
364	Kidnapping or abducting in order to murder.	Ditto	Ditto ... ...
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	Ditto ... ...
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Ditto	Ditto ... ...
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto ... ...

Force and Assault.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Compoundable.	Ditto	Ditto.
Not bailable.	Not compoundable.	Ditto	Any Magistrate.
Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Slavery and Forced Labour.

Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
368	Concealing or keeping in confinement a kidnapped person.	May arrest without warrant.	Warrant ... ...
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	Ditto ... ...
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ... ...
371	Habitual dealing in slaves ...	May arrest without warrant.	Ditto ... ...
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Ditto	Ditto ... ...
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto ... ...
374	Unlawful compulsory labour ...	Ditto	Ditto ... ...
	Of Rape.		
376	Rape	May arrest without warrant.	Warrant ... ...
	Of Unnatural Offences.		
377	Unnatural offences	May arrest without warrant.	Warrant ... ...

CHAPTER XVII.

CHAPTER XVII.—OFFENCES

Of Thefts.

379	Theft	May arrest without warrant.	Warrant ... ...
380	Theft in a building, tent or vessel .	Ditto	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XVI *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Punishment for kidnapping or abduction.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Ditto ...	Ditto	Ditto.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
		Of Rape.	
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
		Of Unnatural Offences.	
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVII.

AGAINST PROPERTY.

Of Theft.

Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ... ...
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto	Ditto ... ...
	Of Extortion.		
384	Extortion	Shall not arrest without warrant.	Warrant ... ...
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto	Ditto ... ...
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto ... ...
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto	Ditto ... ...
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ...
	If the offence threatened be an unnatural offence.	Ditto	Ditto ... ...
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto	Ditto ... ...
	If the offence be an unnatural offence	Ditto	Ditto ... ..
			Of Robbery
392	Robbery	May arrest without warrant.	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.
		Of Extortion.	
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.
and Dacoity.			
Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If committed on the high-way between sunset and sunrise.	May arrest without warrant.	Warrant ... ...
393	Attempt to commit robbery ...	Ditto	Ditto ... ...
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	Ditto ... ...
395	Dacoity	Ditto	Ditto ... ...
396	Murder in dacoity	Ditto	Ditto ... ...
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	Ditto ... ...
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto ... ...
399	Making preparation to commit dacoity.	Ditto	Ditto ... ...
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	Ditto ... ...
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto	Ditto ... ...
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto ... ...
			Of Criminal Mis-
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ... ...
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Rigorous imprisonment for 14 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

appropriation of Property.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
405	If by clerk or person employed by deceased.	Shall not arrest without warrant.	Warrant ... ...
			Of Criminal
406	Criminal breach of trust	May arrest without warrant.	Warrant .. ...
407	Criminal breach of trust by a carrier, wharfinger, etc.	Ditto	Ditto ... ...
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto ... ...
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Shall not arrest without warrant.	Ditto ... ...
			Of the Receiving
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ... ...
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto .. ...
413	Habitually dealing in stolen property.	Ditto	Ditto ... ...
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	Ditto ... ...
		Of Cheating.	
417	Cheating	Shall not arrest without warrant.	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Breach of Trust.			
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
of Stolen Property.			
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto ... .
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Of Cheating.			
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Shall not arrest without warrant.	Warrant ...
419	Cheating by personation	Ditto	Ditto ...
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto	Ditto ...
			Of Fraudulent Deeds and
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto	Ditto ..
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto .
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	Ditto .
		Of Mischief.	
426	Mischief	Shall not arrest without warrant.	Summons ..
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto	Warrant ..
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ..

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Dispositions of Property.			
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Ditto	Ditto.
Ditto ...	Ditto	Ditto	Ditto.
Of Mischief.			
Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	May arrest without warrant.	Warrant ... ...
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto	Ditto ... ...
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property,	Ditto	Ditto ... ...
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto	Ditto ... ...
433	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Ditto	Ditto ... ...
434	Mischief by destroying or moving etc. a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ... ...
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ... ...
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Ditto	Ditto ... ...
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	Ditto ... ...
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	Ditto ... ...
439	Running vessel ashore with intent to commit theft, etc.	Ditto	Ditto ... ...
440	Mischief committed after preparation made for causing death or hurt, etc.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

Of Criminal

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
447	Criminal trespass	May arrest without warrant.	Summons ...
448	House-trespass	Ditto	Warrant ... ...
449	House-trespass in order to the commission of an offence punishable with death.	Ditto	Ditto ... ...
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto	Ditto ... ...
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto ... ...
	If the offence is theft	Ditto	Ditto ... ...
452	House-trespass, having made preparation for causing hurt, assault, etc.	Ditto	Ditto ... ...
453	Lurking house-trespass or house-breaking.	Ditto	Ditto ... ...
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto ... ...
	If the offence is theft	Ditto	Ditto ... ...
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Ditto	Ditto ... ...
456	Lurking house-trespass or house-breaking by night.	Ditto	Ditto ... ...

Trespass.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ... ...
	If the offence is theft	Ditto	Ditto ... ...
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Ditto	Ditto ... ...
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto	Ditto ... ...
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Ditto	Ditto ... ...
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto ... ...
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto	Ditto ... ...

CHAPTER XVIII.

CHAPTER XVIII.—OFFENCES RELATING TO

465	Forgery	Shall not arrest without warrant.	Warrant ... ...
466	Forgery of a record of a Court of Justice or of a Register of births etc. kept by a public servant.	Ditto	Ditto ... ...
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc.	Ditto	Ditto ... ...
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ... ...
468	Forgery for the purpose of cheating	Shall not arrest without warrant.	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XVII *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.

DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVIII *continued.*

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Shall not arrest without warrant.	Warrant ... ...
471	Using as genuine a forged document which is known to be forged.	Ditto	Ditto ... ...
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ... ...
472	Making or counterfeiting a seal, plate, etc. with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ... ...
473	Making or counterfeiting a seal, plate, etc. with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Ditto	Ditto ... ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	Ditto ... ...
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	Ditto ... ...
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto ... ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto ... ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session.
Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
Not bailable.	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ..	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

SCHEDULE II *continued.*

CHAPTER XVIII *continued.*

Of Trade and

1	2	3	4
Section.	*Offence.*	*Whether the police may arrest without warrant or not.*	*Whether a warrant or a summons shall ordinarily issue in the first instance.*
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ... ...
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto	Ditto ... ...
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc. of any property.	Ditto	Summons ...
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto	Ditto ... ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	Ditto ... ...
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc.	Ditto	Ditto ... ...
488	Making use of any such false mark	Ditto	Ditto ... ...
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto	Ditto ... ...

CHAPTER XIX.

CHAPTER XIX.—CRIMINAL BREACH

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto	Ditto ... ...

Property-marks.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

OF CONTRACTS OF SERVICE.

CHAPTER XIX.

Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER XIX *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Shall not arrest without warrant.	Summons ...

CHAPTER XX.

CHAPTER XX.—OFFENCES

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ... ...
494	Marrying again during the lifetime of a husband or wife.	Ditto	Ditto ... ...
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	Ditto ... ...
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto	Ditto ... ...
497	Adultery	Ditto	Ditto ... ...
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto ... ...

CHAPTER XXI.

CHAPTER XXI.—

500	Defamation	Shall not arrest without warrant.	Warrant ... ...
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto ... ...
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	Ditto ... ...

SCHEDULE II *continued.*

CHAPTER XIX *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Presidency Magistrate or Magistrate of the first or second class.

RELATING TO MARRIAGE.

CHAPTER XX.

Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

DEFAMATION.

CHAPTER XXI.

Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER XXII.

CHAPTER XXII.—CRIMINAL INTIMIDATION,

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ... ...
505	False statement, rumour, etc. circulated with intent to cause mutiny or offence against the public peace.	Ditto	Ditto ... ...
506	Criminal intimidation	Ditto	Ditto ... ...
	If threat be to cause death or grievous hurt, etc.	Ditto	Ditto ... ...
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto	Ditto ... ...
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto ... ...
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Ditto . .	Ditto ... ...
510	Appearing in a public place etc. in a state of intoxication, and causing annoyance to any person.	Ditto	Ditto ... ...

CHAPTER XXIII.

CHAPTER XXIII.—ATTEMPTS

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.

INSULT AND ANNOYANCE,

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Not bailable	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Bailable ...	Compoundable.	Ditto	Ditto.
Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years in addition to the punishment under above section.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

TO COMMIT OFFENCES.

According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

SCHEDULE II *continued.*

CHAPTER XXIII *continued.*

OFFENCES AGAINST

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ... ...
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto	Ditto ... ...
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons... ...
	If punishable with fine only ...	Ditto	Ditto ... ...

OTHER LAWS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable...	Not compoundable.	... ...	According to the provisions of section 29 of this Code.
Ditto... ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	Ditto ...	... ...	
Bailable ...	Ditto ...	... ...	
Ditto... ...	Ditto ...	... ...	

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender; section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant; sections 83, 84 and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164.
(9) Power to authorise detention of a person during a police investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders etc. in possession cases; sections 145, 146 and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-Divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(2 A) Power to require security for good behaviour, section 110[1].

[1] Act X of 1886, sec. 19.

(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 444.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, etc.; section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial; section 528.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514; section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED

- BY THE LOCAL GOVERNMENT
  - (1) Power to require security for good behaviour, section 110:
  - (2) Power to make orders as to local nuisances, section 133:
  - (3) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (4) Power to make orders under section 144:
  - (5) Power to hold inquests, section 174:
  - (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:
  - (7) Power to take cognisance of offences upon complaint, section 191:
  - (8) Power to take cognisance of offences upon police reports, section 191:
  - (9) Power to take cognisance of offences upon information, section 191:
  - (10) Power to try summarily, section 260:
  - (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407:
  - (12) Power to sell property alleged or suspected to have been stolen, etc.; section 524.
- BY THE DISTRICT MAGISTRATE
  - (1) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (2) Power to make orders under section 144:
  - (3) Power to hold inquests, section 174:
  - (4) Power to take cognisance of offences upon complaint, section 191:
  - (5) Power to take cognisance of offences upon police reports, section 191:
  - (6) Power to transfer cases, section 192.

LIBRARY.

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED

- **By the Local Government**
  - (1) Power to pass sentences of whipping, section 32:
  - (2) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (3) Power to make orders under section 144:
  - (4) Power to hold inquests, section 174:
  - (5) Power to take cognisance of offences upon complaint, section 191:
  - (6) Power to take cognisance of offences upon police reports, section 191:
  - (7) Power to take cognisance of offences upon information, section 191:
  - (8) Power to commit for trial, section 206.
- **By the District Magistrate**
  - (1) Power to make orders prohibiting repetitions of nuisances, section 142:
  - (2) Power to make orders under section 144:
  - (3) Power to hold inquests, section 174:
  - (4) Power to take cognisance of offences upon complaint, section 191:
  - (5) Power to take cognisance of offences upon police reports, section 191.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED

- **By the Local Government**
  - (1) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (2) Power to make orders under section 144:
  - (3) Power to hold inquests, section 174:
  - (4) Power to take cognisance of offences upon complaint, section 191:
  - (5) Power to take cognisance of offences upon police reports, section 191:
  - (6) Power to commit for trial, section 206.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognisance of offences upon complaint, section 191: (5) Power to take cognisance of offences upon police reports, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT.	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section* 68.)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of , on the day[1] of . Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

II.—WARRANT OF ARREST.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said and to produce him before me. Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

[1] That a summons should not be made returnable on Sunday, see Suth. 1864, Cr. 2.

(*See section* 76.)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of with one surety in the sum of (*or* two sureties each in the sum of), to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section* 86.)

I, (*name*), of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

IV.—Proclamation requiring the Appearance of a Person Accused.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section* 88.)

To the police officer in charge of the police station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorise and require you to attach by seizure the moveable property belonging to the said . to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction

that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town of) , in the District of , viz. , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ;

You are hereby authorised and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section* 90.)

To (*name and designation of the police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that of has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section* 96.)

To (*name and designation of the police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence);

This is to authorise and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section* 98.)

To (*name and designation of a police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorise and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin, (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

X.—Bond to keep the Peace.

(*See section* 106.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections* 109 *and* 110.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XII.—Summons on Information of a probable Breach of the Peace.

(*See section* 114.)

To of

Whereas it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorised agent) at the Office of the Magistrate of on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add,* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees (*each if more than one*)], that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and address*) appeared before me in person (*or* by his authorised agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorise and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, etc., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorise and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall

be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCE.

(*See section* 133.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, etc. (*describe the road or public place*), by, etc. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

or

WHEREAS, etc., etc. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at

in the Court of on the day next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, etc.

or

I do hereby direct and require you, etc., etc. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section* 138.)

WHEREAS on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, etc. of the five or more Jurors*) to be the Jury to try and decide the said questions, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section* 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIX.—Injunction to provide against Imminent Danger pending Inquiry by Jury.

(*See section* 142.)

To (*name, description and address*).

Whereas the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safe-guard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XX.—Magistrate's Order prohibiting the Repetition, etc. of a Nuisance.

(*See section* 143.)

To (*name, description and address*).

Whereas it has been made to appear to me that, etc. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXI.—Magistrate's Order to prevent Obstruction, Riot, etc.

(*See section* 144.)

To (*name, description and address*).

Whereas it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

Whereas it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, etc. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

Whereas, etc., etc. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC. IN DISPUTE.

(*See section* 145.)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(*See section* 146.)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorise and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the

rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(*See section* 147.)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* 'during the last of the seasons at which the same is capable of being enjoyed');

I do order that the said (*the claimant or the claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section* 169.)

I, (*name*), of , being charged with the offence of and after inquiry required to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognisance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to

answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section* 170.)

I, (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or* to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day . 18 .

(*Signature.*)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(*See section* 218.)

The Magistrate of hereby gives notice that he has committed one . for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

XXVIII.—CHARGES[1].

(*See sections* 221, 222, 223.)

(I.)—CHARGES WITH ONE HEAD.

(*a*) I, [*name and office of Magistrate, etc.*], hereby charge you [*name of accused person*], as follows:—

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognisance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

On Penal Code, section 121.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[1] In the body of the Code 'charge' is used as the statement of a specific offence.

[*To be substituted for* (*b*) :—]

(2) That you, on or about the day , at , with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 124.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 161.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 166.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that ' ,' which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 193.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 304.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 306.

(8) That you, on or about the day of , at , voluntarily caused grevious hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 325.

(9) That you, on or about the day of , at , robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 392.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On section 395.

[*In cases tried by Magistrates, substitute* 'within my cognisance' *for* 'within the cognisance of the Court of Session,' *and in* (*c*) *omit* 'by the said Court.']

(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, etc.*], hereby charge you [*name of accused person*], as follows:—

On section 241.

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

On sections 302 and 304

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

On sections 379 and 382.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft,

and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court].

(4) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that ' ,' and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that ' ,' one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* High Court] [1].

Alternative charges on section 193.

[*In cases tried by Magistrates, substitute* 'within my cognisance' *for* 'within the cognisance of the Court of Session,' *and in* (*c*) *omit* 'by the said Court.']

(III.)—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*), as follows :—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognisance of the Court of Session [*or* { High Court / Magistrate } *as the case may be*].

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the offence was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code [2].

And I hereby direct that you be tried, etc.

XXIX.—WARRANT OR COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or*

[1] See 10 Cal. 937. It is not necessary in India to allege which of the two contradictory statements is false, or to establish the falsity of that which is impeached as untrue, 7 All. 44, overruling 5 All. 17, and following 6 Suth. Cr. 65: 4 Mad. H.C. 51; and 13 Ben. 324.

[2] See another form, 4 Mad. H. C., Rulings, xi.

sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorise and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections* 68 *and* 252.)

To of

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*), and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section* 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section* 328.)

To (*name*) of (*place.*)

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of 18 .

(*Seal.*) (*Signature.*)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of , 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of . confirming the said sentence has been received by this Court;

This is to authorise and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS at a Session held on the . day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*);

This is to authorise and require you the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words 'custody in the said jail,' 'and there to carry into execution the punishment of imprisonment under he said order according to law.'

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*)

XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(*See section* 386.)

To (*name and designation of the police-officer or other person, or persons, who is or are to execute the warrant*).

WHEREAS (*name and description of the offender*) was on the day of , 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorise and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorise and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(*See section* 485.)

To (*name and designation of officer of Court*).

WHEREAS (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry

into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorise and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section* 488.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section* 488.)

To (*name and designation of the police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of

This is to authorise and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(*See sections* 496 *and* 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section* 500.)

To the Superintendent (*or* Keeper) of the Jail at

(*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section* 514.)

To the police-officer in charge of the police station at

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognisance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is authorise and require you to attach any moveable property of the said (*name*) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(*See section* 514.)

To of

WHEREAS on the day of , 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To of .

WHEREAS on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the

period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section* 514.)

To

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorise and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section* 514.)

To (*name, description and address*).

Whereas on the day of , 18 , you entered into a bond not to commit, etc. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(*See section* 514.)

To (*name and designation of police-officer*) at the police-station of

Whereas (*name and description*) did on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LI.—Warrant of Imprisonment on Breach of a Bond to keep the Peace.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be

paid, although duly called upon to do so, and payment therefore cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the police-officer in charge of the police-station at .

WHEREAS (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name etc. of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS (*name, description and address*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name etc. of the principal*) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his

moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

APPENDIX A.

(Supra, p. 59, note 2.)

PLACES OUTSIDE BRITISH INDIA IN WHICH THE CODE IS IN FORCE.

The Code of Criminal Procedure is in force (in some cases with certain modifications) in—

1. The Haidarábád Assigned Districts (J. M. Macpherson's *Lists of British Enactments in force in Native States*, Calcutta, 1885, p. 34);

The Civil and Military Station of Bangalore (ibid. p. 85);

The Salt sources in the Rájputána Agency (ibid. pp. 103, 106, 108, 109, 110).

The Rájputána Parganas under British administration (Todgarh, Dewair, Saroth, Chang and Kot-karana), (ibid. p. 112): as to other Native States in the Rájputána Agency, see ibid. p. 444;

The District of Quetta (ibid. pp. 114, 115);

The Bombay States of Akalkot, Játh, Miraj (Senior), Miraj (Junior), and Ramdurg; (ibid. pp. 332, 337, 339).

2. The cantonments of Quetta, Mittri, Sikandarábád, Díesah, Maú, Nágod, Naogáon, Nímach, Satná, Ábu, Deoli, and, probably, others (ibid. pp. 130, 131, 132, 149, 193, 200, 211, 223, 229, 249, 254, 262). Cantonments.

3. The lands occupied by the following railways constructed in or passing through Native States: G. I. Peninsular (*Kurundwar*), Nágpur and Chhattísgarh (*Khairagarh and Nundgaon*), Rájputána-Malwa, Bhaunagar-Gondal, Bombay, Baroda and Central India, Madras Railway (*Mysore*), Sindhia (*Dholpur, Gwáliár*), Bhopál, Sind-Pishín (ibid. pp. 271, 273, 279, 280, 281, 285, 287, 291, 294, 295, 300, 302, 314, 318, 319, 325, 328, 329). Railways.

4. In Mysore the Code of 1872 and its amending Acts were in force when the present Mahárájá was placed in possession. Whether he has passed a regulation applying the Code of 1882 I have not been able to ascertain. Mysore.

5. As to Kashmír, the British officer for the time being on duty has the powers of a magistrate of the first class as described in section 20 of the Code of 1872[1] for the trial of offences committed by European British subjects, or by Native British subjects being servants of European British subjects: Kashmír.

Provided that in the case of any offender being a European British subject, he has only power to pass a sentence of imprisonment for a term not exceeding three months, or fine not exceeding

[1] i.e. secs. 32, 33 of Act X of 1882.

one thousand rupees, or both; and when the offence complained of is, under the Penal Code, punishable with death, or with transportation for life, or when it cannot, in the opinion of such officer, be adequately punished by him, he shall (if he thinks that the accused person ought to be committed) commit him to the Chief Court of the Panjáb.

Fines are recovered in manner provided by section 307 of the Code of 1872[1]. Sentence of whipping is carried into execution in manner provided by sections 310, 311, 312, and 313 of the same Code[2] (ibid. p. 420).

Persian Gulf.

6. As to the Persian Gulf, see ibid. 449.

Zanzibar.

7. As to Zanzibar, under the Zanzibar Order in Council of 1884 the Code is made applicable to Zanzibar as from the commencement of that Order. Subject to the other provisions of this Order, the Code and the other enactments relating to the administration of criminal justice in India for the time being applicable to Zanzibar has effect as if Zanzibar were a district in the Presidency of Bombay, and the Judicial Assistant is deemed to be the Magistrate of the district; the Consul-General is deemed to be the Sessions Judge; the High Court of Judicature at Bombay is deemed to be the High Court; and the powers both of the Governor-General in Council and of the Local Government under those enactments are exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Governor-General in Council.

APPENDIX B.

(Supra, p. 161.)

Offences triable by Jury.

As to this matter, four of the Local Governments have published notifications to the following effect:—

Lower Provinces.

In the Lower Provinces:—7th January, 1862 (*Calcutta Gazette*, 1862, p. 87): In the district of the Twenty-four Parganas, Hugli, Bardwán, Murshídábád, Nadiyá, Patna, and Dacca, the trial by any Court of Session of all the offences defined in chaps. VIII, XI, XVI, and XVII of the Penal Code shall be by jury. 27th May, 1862 (*Calcutta Gazette*, 1862, p. 2041): In the above-mentioned districts the trial by any Court of Session of the offences defined in chap. XVIII of the Penal Code (offences relating to documents, and to trade or property-marks) shall be by jury. 15th October,

[1] i.e. secs. 386, 387, 389 of Act X of 1882.

[2] See secs. 391–395 of Act X of 1882.

1862 (*Calcutta Gazette*, 1862, p. 3416): Abetments of and attempts to commit any of the above-mentioned offences shall be tried by jury.

In Assam, 28th March, 1862 (*Calcutta Gazette*, 1862, p. 1286): In all the districts comprising the Assam Division the trial of all offences by the Court of Sessions shall be by jury. Assam.

In Madras, see the *Fort St. George Gazette*, 15th March, 1862, p. 450 (Sessions Courts of Chittur, Cuddapah, Masulipatam and Rajamundry): 13th May, 1862, p. 773 (Cuddalore): 1st August, 1862, p. 177 (Negapatam): 2 Jan. 1863, p. 1 (Chittur, Cuddapah, Masulipatam, Rajahmundry, Cuddalore, Negapatam): 14th April, 1863, p. 633 (Tanjore): 22 Feb. 1870, p. 220 (Cuddalore). *Fort St. George Gazette*, 20th March, 1883, Part I, p. 150: In all Courts of Session in the Madras Presidency, except those in the Agencies of Ganjam, Godávarí, and Vizagapatam, trials of the following offences must be by jury:—the offences described in the Penal Code, secs. 379, 380, 382, 392, 393, 394, 395, 397, 398, 399, 400, 401, 402, 411, 412, 414, 451, 452, 453, 454, 455, 456, 457, 458, 459, and 461. Madras.

In Bombay (*Bombay Government Gazette*, 12th August, 1875, Part I, p. 798): The Court of Sessions at Puṇá must try by jury all offences for which under chaps. VIII, XI, XII, XVI, XVII, or XVIII of the Penal Code, or under any of those chapters taken in connection with sec. 75 of the Penal Code, the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and also all abetments of or attempts to commit any of the offences included in those chapters. Any person who may be tried by a jury for any of the offences specified must be tried by the same jury for all offences with which he may be charged on the same trial. Trial by jury has been introduced into the other Sessions Courts in the Bombay Presidency; but I have been unable to find the notifications. Bombay.

In Burma, 8th June, 1877 (*British Burma Gazette*, 1877, Part II, p. 117): The trial before the Courts of Session in British Burma of all offences committed by European British subjects shall be by jury. 22nd December, 1875 (*British Burma Gazette*, 1875, Part II, p. 233): The trial of all offences by the Court of the Recorder of Rangoon, and by the Court of the Judge of the town of Maulmain, shall be by jury. Burma.

Similar notifications have been issued by the Local Governments of the N. W. Provinces and the Panjáb, and, probably, by those of Oudh, the Central Provinces, and Coorg; but I have been unable to find them.

APPENDIX C.

(Supra, p. 162.)

NUMBER OF JURY.

As to this matter, six of the Local Governments have issued notifications to the following effect:—

Lower Provinces.

In the Lower Provinces (*Calcutta Gazette*, 22d Jan. 1873, Part I, p. 152): In trials by jury before a Court of Session, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, the jury shall consist of five persons in the districts named in the subjoined list A, and of three persons in the districts named in list B:—

List A. Bardwán, Midnapur, Huglí, Howrah, Twenty-four Parganas, Murshidábád, Dacca, Patna, Sháhábád, Tirhut, Sáran and Champárean, Monghyr, Bhágulpur, Cuttack.

List B. Bánkurá, Bírbhúm, Nadiyá, Jessor, Dinájpur, Máldah, Rájshahi, Rangpur, Bográ, Pabna, Darjíling, Jalpaiguri, Farídpur, Bakarganj, Maimansinh, Sylhet, Cachar, Chittagong, Noakhálí, Tipperah, Gaya, Purneah, Santál Parganas, Púrí, Balasor, Hazáríbágh, Lohardagga, Singbhúm, Mánbhúm, Goálpará, Kámrup, Darrang, Naugong, Síbságar, Lakhimpúr.

Ibid. (*Calcutta Gazette*, June 11, 1873, Part I, p. 741): In trials before the Court of Session in which the accused person in not a European or American, the jury shall consist of five persons in all districts in which the system of trial by jury had been, or may hereafter be, extended.

Madras.

In Madras (*Fort St. George Gazette Extraordinary*, 21st December, 1872, p. 2): In trials by jury before Sessions Courts the jury shall consist of five jurors. To the same effect is para. 12 of the notification of 1st Jan. 1873 in the *Fort St. George Gazette*, 25th March, 1873, p. 598, and see the notification No. 92, *ibid.*, 20th March, 1883, Part I, p. 150.

Bombay.

In Bombay (*Bombay Government Gazette*, 13th Feb., 1873, p. 129): In all trials by jury before the Puṇá Court of Session of offences under chaps. VIII, IX, XII. XVI, XVII, XVIII of the Indian Penal Code, the jury shall consist of five persons. Throughout the Bombay Presidency five is the number of the jury in trials before the Court of Session in which a European, not being a European British subject, or an American, is the accused person or one of the accused persons.

N. W. Provinces.

In the North-Western Provinces (*N.-W. Provinces Gazette*, 1873, p. 1042): The jury in trials by jury before the Court of Session shall consist of seven persons in the districts of the N.W. Provinces.

In the Panjáb (*Panjáb Gazette*, 1873, p. 76): The jury in trials before the Court of Session in the districts of Lahore, Delhi, Rawal Pindi and Pesháwar, shall consist of nine persons: in the districts of Ambálah, Multán and Sialkot of five persons, and in all other districts of the Panjáb of three persons. Panjáb.

Similar notifications have doubtless been issued by the Local Governments of Oudh, the Central Provinces, Burma and Coorg; but I have not been able to find them. It is very desirable that each of the Local Governments should revise and issue in an accessible form all its uncancelled notifications under the Codes of Criminal Procedure of 1861, 1872, and 1882.

APPENDIX D.

(Supra, p. 2, note 2.)

THE UNREPEALED PART OF 9 GEO. IV. C. 74.

Whereas many wholesome alterations have been made in the criminal law of England, and the administration thereof, by authority of Parliament; and it is expedient that some of the said alterations should be extended to the British territories under the government of the United Company of Merchants of England trading to the East Indies: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that this Act shall commence and take effect on and from the 1st day of March, 1829, and shall extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of his Majesty's Courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Commencement of Act.

. . . . . .

And for the more effectual prosecution of accessories before the fact to felony, be it enacted, that if any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring or commanding shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted Trial of accessory before the fact although offence committed on high seas or abroad.

and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as an accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be enquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed on the high seas, or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony, and the offence of counselling, procuring, or commanding, shall have been committed in different places, the last mentioned offence may be inquired of, tried, determined, and punished in any of his Majesty's courts of justice within the British territories under the government of the said United Company having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any such offence, whether as any accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

Where offences of principal and accessory are committed in different places.

No person tried twice for same offence.

Accessory after fact triable by any court having jurisdiction to try principal.

And be it enacted, that if any person shall become an accessory after the fact to any felony, whether the same by a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same place as the principal felony, although such act may have been committed either on the high seas or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony, and the act by reason whereof any person shall have become accessory, shall have been committed in different places, the offence of such accessory may be enquired of, tried, determined, and punished in any of his Majesty's courts of justice within the British territories under the government of the said United Company, having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

When offences of principal and accessory are committed in different places.

No person tried twice for same offence.

Accessory may be prosecuted

And be it enacted, that if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed

against any accessory, either before or after the fact, in the same manner as if such principal felon shall die or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if he or she be in anywise convicted, as he should have suffered if the principal had been attainted.

After conviction of principal.

. . . . . .

And be it enacted, that all offences prosecuted in any of his Majesty's courts of Admiralty shall, upon every first and subsequent conviction, be subject to the same punishments, whether of deaths or otherwise, as if such offence had been committed upon the land.

Admiralty offences.

And be it enacted, that wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject-matter thereof, or the offender, or the party affected or intended to be affected by the offence, shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved.

Construction of criminal statutes.

. . . . . .

And be it enacted, that where any person, being feloniously stricken, poisoned, or otherwise hurt at any place whatsoever, either upon the land or at sea, within the limits of the Charter of the said United Company, shall die of such stroke, poisoning, or hurt at any place without those limits, or being feloniously stricken, poisoned or otherwise hurt at any place whatsoever, either upon land or at sea, shall die of such stroke, poisoning, or hurt at any place within the limits aforesaid, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished by any of his Majesty's courts of justice within the British territories under the government of the said United Company, in the same manner in all respects as if such offence had been wholly committed within the jurisdiction of the court within the jurisdiction of which such offender shall be apprehended or be in custody. . . . .

Trial of murder, etc. where cause of death only, but not death, or where death only, but not cause, happens within limits of Company's charter.

APPENDIX E.

(Supra, p. 265).

THE UNREPEALED PART OF ACT X OF 1875.

Advocate General may exhibit informations.

144. The Advocate General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, info mations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer[1].

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

Power to enter *nolle prosequi.*

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal[2].

[1] Informations are filed *ex officio* in the Court of Queen's Bench (or as it is now called, the Queen's Bench Division of the High Court of Justice) without the intervention of a grand jury. They lie for misdemeanors only, and not for treasons, felonies or misprision of treason (Archbold, p. 116).

Informations are filed in the Court of Exchequer to recover debts due to the Crown under revenue and other penal statutes, and damages for trespassing on Crown lands.

[2] So in England the party discharged remains liable to be re-indicted, Archbold, p. 115.

BENGAL SECRETARIAT LIBRARY.

INTRODUCTION TO THE CODE OF CIVIL PROCEDURE.

It is obvious that, in every system of jurisprudence professing to provide for the due administration of public justice, some forms of proceeding must be established, to bring the matters in controversy between the parties, who are interested therein, before the tribunal by which they are to be adjudicated. And for the sake of the despatch of business, as well as for its due arrangement with reference to the rights and convenience of all the suitors, many rules must be adopted to induce certainty, order, accuracy, and uniformity in these proceedings[1].

The Anglo-Indian Courts have always tried to do justice between man and man. But no one can say that their procedure was formerly characterised by certainty, order and accuracy; and its want of uniformity is equally incontestable.

Multiformity of old procedure.

Before the 1st July, 1859, there were no less than nine different systems of civil procedure simultaneously in force in Bengal: four in the Supreme Court, corresponding to its common-law, equity, ecclesiastical and admiralty jurisdictions; one for the Court of Small Causes at Calcutta; one in the military Courts of Requests; and three in the Courts of the East India Company, one for regular suits, a second for summary suits, and a third applicable to the jurisdiction of the Deputy Collector in what were called resumption-suits[2].

Procedures of Supreme Courts.

The procedures, as well as the jurisdictions, of the Supreme Court were all founded on the charter of George III, dated 26th March, 1774. These jurisdictions were technically termed 'sides' of the Court, and the procedure on each 'side' was similar to the procedure of the corresponding Court in England, with this difference, that the *viva voce* examinations of

[1] See Story, *Commentaries on Equity Pleading*, § 1.

[2] Also called *lá-khirâj* suits. All land in India is assumed to be subject to *khirâj* (the tax imposed by Muhammadans on the land of conquered countries), unless the right to it has been granted away by the sovran; and *lá-khirâj* suits were instituted to try the question whether lands held without payment of revenue were so held by a legal title or not. They were called 'resumption-suits,' because by reason of them the Government is said to 'resume' the right illegally withheld from it, First Report of Commissioners appointed to consider the reform of the judicial establishments etc. of India, p. 200. See in Bengal, Ben. Regs. 19 of 1793, 37 of 1793, and 7 of 1882: in Madras, Mad. Regs. 25 of 1802, and 13 of 1802: in Bombay, Bom. Regs. 17 of 1827 and 6 of 1833.

witnesses were taken down in writing and the depositions were signed by the witnesses. The source of the procedure of the Small Causes Court I have not been able to ascertain. There were no written pleadings in this Court. Procedure in the military Courts of Requests was regulated by Act XI of 1841. In these Courts also there were no written pleadings. The civil procedure of the Company's Courts originated in a code of regulations passed by Lord Cornwallis, in 1793[1]. That code was applicable chiefly to regular suits, the practice of the Courts being more similar to that of the Courts of equity than of common law[2], and there was only one class of cases for which it was then considered necessary to provide a more summary procedure. These were suits for the forcible dispossession of disputed land and crops. But, a few years later, the summary procedure was extended to cases connected with the collection and exaction of rent. The summary jurisdiction in cases of forcible dispossession was transferred to the Magistrates by Act IV of 1840; and the summary jurisdiction in cases of rent, which had gradually increased so as to embrace almost every question between the zamíndár and raiyat, was transferred by Ben. Reg. 8 of 1831 to the collector of land-revenue.

Procedure of Company's Courts.

Written pleadings.

In suits in the Company's Courts there were written pleadings, which consisted of a plaint, an answer, a reply and a rejoinder. The parties were not restricted to any particular form, but each told his story in his own way. The pleadings were in consequence argumentative and sometimes very voluminous, and full of irrelevant matter and repetition; and they often failed to bring the parties to direct issue. A regulation passed in 1814[3], no doubt, required the Judge, after the close of the proceedings, to settle the issues, or rather fix the points to be determined. But this 'most whole-

[1] Ben. Reg. 3 of 1793.

[2] It was, however, nearer to the Scottish than to any English system, First Report, p. 198.

[3] Ben. Reg. 26 of 1814, sec. 10, cl. 2, cl. 4. Other rules on the subject of civil procedure were contained in Reg. 4 of 1793, sec. 7: Reg. 2 of 1806, sec. 2: Reg. 23 of 1814, secs. 46, 73: Reg. 26 of 1814, sec. 4, cl. 2: Reg. 5 of 1831, sec. 16: Reg. 6 of 1832, sec. 3 (which enabled European judges to avail themselves of the assistance of Natives as a panchâyat, as assessors, or as jurors), and Acts XII of 1843, IV of 1850, VIII of 1850, XV of 1850, XXV of 1852, and XV of 1853. The jurisdiction of the provincial Courts depended on Ben. Reg. 3 of 1793, sec. 8: 7 of 1795, sec. 7: 2 of 1803, sec. 5: 5 of 1831, secs. 5, 15, cl. 2, and 27, cl. 3; and Act XXV of 1837, sec. 1. As to the Courts in which suits were to be instituted, see Act IX of 1844, sec. 1, and Reg. 5 of 1831, sec. 7. As to the power of the Sadr Court to transfer suits, see Acts III of 1837 and XXVII of 1838. The Sadr Court might, under Reg. 25 of 1814, sec. 5, cl. 1, call up from any subordinate Court and determine any original suit amounting to Rs. 50,000 and upwards; but this jurisdiction appears never to have been exercised.

some regulation' (as it was called by the Judicial Committee) was much neglected by the lower Courts, and the parties were allowed to bring in from time to time as might be convenient their exhibits and lists of witnesses, with a petition stating the point to prove which they were adduced. No particular course was prescribed to be followed at the final hearing. The Judge either himself perused the pleadings and depositions, or listened to them as read by a corruptible Native officer. 'The parties were then heard, and the general practice in this case was for the Judge to put a question to the vakíl of one of the parties, which was answered by the opposite vakíl to the best of his ability, and then a good deal of wrangling sometimes followed between the opposed pleaders [1].' The Judge, as he does still, determined both fact and law, but his judgment was often reversed by the appellate Court on merely technical grounds, not affecting the merits of the case or the jurisdiction [2].

Mutatis mutandis, it may be said that in the other parts of British India the systems of civil procedure were equally numerous, and, it may be added, equally imperfect [3].

First Law Commission.

The evils arising from this state of things had long been felt; and in 1834, the statute 3 & 4 Wm. IV, c. 85, sec. 53, provided that certain persons styled the Indian Law Commissioners should inquire into all existing forms of judicial procedure in force in any part of British India, and should suggest such alterations as might in their opinion be beneficially made in those forms.

These Commissioners recommended extensive alterations, and appear to have drafted a Code of Civil Procedure. This I have never seen. It is certain, however, that in or about 1853, Mr. A. J. Moffatt Mills (a judge of the Sadr Díwání Adálat) and Mr. (afterwards Sir H. B.) Harington were appointed 'special Commissioners for revising the Code of Civil Procedure;' and that the result of their labours, a draft entitled 'The Code of Civil Procedure of the Courts of the East India Company [4],' was printed in

[1] First Report, p. 199.

[2] First Report, p. 83.

[3] The Madras Regulations on the subject were 2 and 3 of 1802, 4 of 1816, sec. 14, cl. 2, and 4 of 1816, sec. 24. The procedure of Village Munsifs and Village Pancháyats is unaffected by the Code (see sec. 61, cl. *c*). The jurisdiction of the provincial Courts depended on Mad. Reg. 2 of 1802, sec. 5: 4 of 1816, sec. 5, cl. 1: Reg. 6 of 1816, sec. 11: Reg. 4 of 1833, secs. 4 and 5, and Act VII of 1843, secs. 3 and 4. The Bombay rules as to procedure were in Bom. Regs. 2 of 1827, sec. 10, 4 of 1827, and 17 of 1827, secs. 32, 34. The procedure of officers appointed to try small suits in military bazárs in Bombay is unaffected by the Code. The jurisdiction of the provincial Courts depended on Bom. Reg. 2 of 1827, sec. 21: Reg. 1 of 1830, sec. 5, cl. 1: Reg. 18 of 1831, sec. 3, cl. 2.

[4] This draft contains 1026 sections distributed among 36 chapters, the arrangement and drafting of which are very faulty. As to its substance, it

1854 and laid before another body of Commissioners in England appointed under 16 & 17 Vic. c. 95, sec. 28. These Commissioners were thus instructed by Sir Charles Wood, then President of the Board for the affairs of India:—

'It is obviously most desirable that a simple system of pleading and practice, uniform, as far as possible, throughout the whole jurisdiction, should be adopted, and one which is also capable of being applied to the administration of justice in the inferior Courts of India. The embarrassment will thus be avoided which a diversity of procedure throws in the way of an appellate jurisdiction; and the proceedings in the new Court[1] will be a pattern and guide to the inferior tribunals in the Mufassal.

'Your first duty, therefore, should be to address yourselves to the preparation of such a code of simple and uniform procedure.'

Four draft codes.

The Commissioners accordingly produced and submitted to Her Majesty in their first report a draft code of procedure for all ordinary civil courts in the Lower Provinces of Bengal, with the exception of the Court of Small Causes in Calcutta. In their third and fourth reports, dated the 20th May, 1856, they submitted similar codes for the civil courts in the North-Western Provinces and the Presidencies of Madras and Bombay. Four Bills founded on these drafts were in 1857 introduced into the Legislative Council by Mr. (now Sir Barnes) Peacock, and referred to Select Committees. These Bills were amalgamated and became law as Act VIII of 1859. The principal improvements which it made were, according to Sir Barnes Peacock[2], these: (*a*) it enabled the Civil Courts to grant injunctions to restrain a defendant from committing waste, injury or breach of contract; (*b*) it enabled Civil Courts to appoint receivers or managers for the preservation or the better management or custody of property in dispute; (*c*) it provided that the parties to a suit might, where they were at issue on some question of law or fact, state a case to the Judge in the form of an issue and agree among themselves in writing to abide by the finding of the Judge upon such issue, such finding to be enforceable as if it were a judgment in a contested suit; and (*d*), as introduced, it dispensed with the necessity of going through all the tedious and technical forms of pleading in the Supreme Courts. But the Code as passed did not apply to those Courts, or to the Presidency Small

The Code of 1859.

is enough to say that under it written pleadings would have been retained, but restricted to a plaint and to an answer in which the defendant might introduce fresh matter.

[1] i.e. the Court formed by amalgamating the Supreme and the Sadr Courts in each of the Presidencies, now called the High Court.

[2] Proceedings of the Legislative Council of India, 1857, col. 23.

Cause Courts. Nor did it extend to the Non-regulation Provinces.

Amendments of Act VIII of 1859.

The day after the Code had taken effect in Bengal, and before it had come into force in Madras and Bombay, Mr. Harington, *nil actum reputans dum quid superesset agendum*, moved the first reading of a Bill (afterwards Act IV of 1860) to amend one of its rules relating to appeals to the Sadr Court, and the process of amendment went on to the end of 1863—Acts XLIII of 1860, XXIII of 1861, IX of 1863, and XVIII of 1863 being passed in swift succession.

In the meanwhile the Code had been extended to almost the whole of British India[1], and it was also made applicable to the High Courts in the exercise of their civil, intestate, testamentary, and matrimonial jurisdictions[2].

Mr. Harington's Consolidation Bill.

In 1863–1864 a Bill consolidating the Acts above mentioned, and also providing for the service of summons upon, and for examining criminals confined in gaol, and for enabling the Courts to obtain the testimony of experts on questions relating to the law of the religion of the parties, was prepared by Mr. (afterwards Sir Henry) Harington. This Bill was published in April, 1864, and introduced and referred to a Select Committee in the following November. This Committee made many amendments in the wording of the Bill, but left its bad arrangement unaltered and its numerous defects unsupplied. They presented a report dated 6th April, 1865. The amended draft, with the report, was sent home to the Secretary of State in Council, and by him referred to the Indian Law Commissioners. They were of opinion that the project of consolidation should be deferred, and that it would be better to amend the Code by successive enactments, as occasion might demand. The Secretary of State in Council in his despatch of the 25th February, 1867, expressed his concurrence in that opinion.

Further changes in the law.

In consequence the work was broken off; but after the correspondence above referred to, there were more changes in the law, each tending to make some portion of the existing Code inapplicable to existing circumstances. Besides the modifications effected by local Acts, the General Clauses Act of 1868, the Prisoners' Testimony Act of 1869, the General Stamp Act of the same year, the Court Fees Act of 1870, the Limitation Act of

[1] Subject, in the Non-regulation Provinces, to the restriction that the sale of land in execution of decrees should not take place without the consent of some executive authority.

[2] See the revoked Letters Patent of May 14, 1862, § 37, and the present Letters Patent of December 28, 1865, § 37. As to proceedings in the intestate and testamentary jurisdictions, see the Succession Act, X of 1865, secs. 3, 238 and 261. As to the matrimonial jurisdiction, see Act IV of 1869, sec. 45.

1871, the Evidence Act of 1872, the Oaths Act of 1873, all had this effect to a greater or less extent. Moreover, Act V of 1866 had provided a summary procedure on bills of exchange, and Act X of 1867 dealt with references by provincial Courts of Small Causes.

Again, the Code of 1859 was unquestionably ill-drawn, ill-arranged and incomplete, and there had been a large number of decisions, which showed either some inconvenience in the rules of the Code or some ambiguity of expression, or absence of direction, which had given rise to disputes. To a certain extent these matters were settled by judicial decisions; but the decisions, however well they might interpret the language of the Code, did not always lay down the rule most beneficial to suitors, and even in the more frequent instances, when the decision laid down the best rule, it was often convenient to embody it in the written law.

Lastly, the Government of India had decided to make sundry amendments in the law relating to the execution of decrees, and to render more efficient the provisions of the Code as to execution-debtors unable to pay their debts.

Under these circumstances, the Government of India, with the advice of Mr. (now Lord) Hobhouse, who was then law-member, and the sanction of the Secretary of State, determined to proceed with Mr. Harington's Bill, and the writer, who was then Secretary to the Government of India in the Legislative Department, with the permission of Mr. Hobhouse, recast Mr. Harington's draft. In doing so he attempted a clearer and more methodical arrangement of the different parts and clauses of the Code than was then the case: he embodied in it a number of judicial decisions, some incorporated in the substance of the enactments, some by way of explanation: in a few instances he proposed rules more generally convenient than those which had been decided to result from the then wording of the Code: he supplied several forms of proceeding which he thought might be useful to suitors; and he added certain provisions as to joinder of parties, *lis alibi pendens*, foreign judgments, interrogatories, affidavits, admission of documents, administration suits, suits by and against minors and lunatics, suits relating to charities, interpleader, etc., some of which were borrowed with necessary modifications from the orders and rules made in England under the Judicature Acts, others from the rules of the High Court of Calcutta, and others from the New York Code of Civil Procedure. Of these new provisions, one, the chapter on interpleader, was wholly drawn by Mr. Hobhouse; the chapter on payment into court and the section on set-off were

either wholly or chiefly from his pen; and the other chapters, especially those on execution of decrees and appeals to the Queen in Council, owe much to his skill and industry.

Arrangement of the new Code.

The re-arrangement of the Code was made on the following principles. First, the course of an ordinary suit is followed, from the moment that the plaintiff determines to sue until he obtains execution of his decree. Incidental proceedings (as, for example, when either party dies or becomes insolvent, or a female party marries, or a local investigation is required) are then separately dealt with. Thirdly, we have suits in particular cases, as, for example, when the plaintiff is a pauper, a lunatic, or a mere stakeholder; or the defendant is a corporation, a minor, or a military man. Fourthly, the Code deals with provisional remedies (such as arrest and attachment before judgment, and interlocutory injunctions), which are wanted to prevent the plaintiff absconding or property disappearing or being wasted pending litigation. Fifthly, we have special proceedings not of the nature of regular suits—such as references to arbitration and summary suits on negotiable instruments. These five divisions exhaust the subject of procedure in the exercise of original jurisdiction. If, then, an unsuccessful litigant wishes to present an appeal, or to have a judgment reviewed, he will find the law on these subjects in Parts dealing respectively with appeals and reviews. References of points of law to the High Courts are also separately dealt with: the special rules relating to the Courts established under 24 & 25 Vic. c. 104 in the Presidency-towns and at Allahabad are placed in a Part by themselves; and the body of the draft is completed by a few sections comprising some miscellaneous matters which could not conveniently be placed under any of the other heads. The new Code was thus divided into ten Parts, relating respectively to—

I. Suits in general.
II. Incidental proceedings.
III. Suits in particular cases.
IV. Provisional remedies.
V. Special proceedings.
VI. Appeals.
VII. Review of judgment.
VIII. References to the High Court.
IX. Special rules relating to the chartered High Courts.
X. Certain miscellaneous matters.

The draft, with a preliminary report dated March 8, 1875, was presented to the Council, published in the Gazette of India, and

circulated to the Local Governments. A further report, dated 13th September, 1876, describing many improvements in the draft suggested by the criticisms of Messrs. Pitt Kennedy, Belchambers, Plowden and others[1], was presented to the Council with the revised Bill in September, 1876. And a final report, describing many further improvements due to Sir R. Garth, Sir Charles Turner, Mr. Justice Ainslie, and Paṇḍit Lakshmí Náráyaṇa, was presented to the Council in the spring of 1877. After a memorable speech by Sir Arthur, now Lord Hobhouse, the Bill became law on the 30th March in that year, and it came into force on the following 1st of October.

Amendments of Code of 1877.

Nine months' experience, however, showed that several amendments, both formal and substantial, were desirable. Local laws prescribing a special procedure for suits between landlord and tenant had not been sufficiently saved by section 4, and the result was that the local legislatures were debarred from making any law dealing with that matter. Section 229 did not provide for Courts, such as that of the Resident at Mandalay, which were then outside British India. And there were other difficulties as to the rules for the payment of subsistence-money of imprisoned judgment-debtors: as to appeals against orders for the sale of attached property or rejecting applications to set aside *ex parte* decrees, and as to the power of Judicial Commissioners to regulate their own procedure. The chapter on Insolvency did not extend to persons against whose property orders of attachment had issued in execution of money-decrees, and it required amendment in other respects. The section (622) as to revision by the High Court did not provide for the case where the lower Court appeared to have acted in the exercise of its jurisdiction illegally or with material irregularity. And there were several slips in the drafting, of which perhaps the most important was in the first clause of the section (113) on *res judicata*. The writer, who had succeeded Sir Arthur Hobhouse as law-member, therefore introduced into the Viceregal Council a Bill which became law as Act XII of 1879, and amended about 130 sections of the Code.

The Code of 1882.

In the beginning of 1882 another Bill was introduced to exempt from attachment the whole of the salaries of public officers and railway servants when not exceeding rs. 20 *per mensem*, extending section 539 (as to suits relating to public charities) to suits relating to religious endowments, and applying sections 434 and 650 A to

[1] Messrs. Field, Maclean, R. J. Crosthwaite and J. W. Smyth (all of the Bengal Civil Service), and Hukm Chand, an Extra Assistant Commissioner in the Panjáb.

Revenue as well as to Civil Courts. The Select Committee to which this Bill was referred added some ten or twelve less important amendments of other parts of the Code; and as the Code had been already amended, thought that the convenience of the courts, the bar and the public required that Act X of 1877 and its amending Act (XII of 1879) should be repealed and re-enacted with the amendments proposed by the amended Bill, but without any change in the order and numbering of the parts, chapters and sections of the Act of 1877. The Council agreed to this, and the present Code, Act XIV of 1882, accordingly became law.

The Code begins with a short preamble and nine sections containing certain definitions and other preliminary matter. The portions of the Code which extend to the provincial Courts of Small Causes are declared by section 5 and schedule II. The portions extending to the Presidency Small Cause Courts are declared by Act XV of 1882, sec. 23 and its second schedule. The few portions which do *not* apply to the High Courts in the exercise of original jurisdiction are declared by the Code itself, section 638.

Part I. Of Suits in General.

This Part deals with litigation in the simplest case, from the time that the plaintiff decides on suing and has to select his *forum* to the time when, having obtained a decree, he proceeds to execute it. It assumes that the plaintiff is a sane adult British subject, and neither a pauper, a military man, or a mere stakeholder. It assumes that the defendant is another sane adult British subject, that he is not a military man, and that he does not attempt to abscond or to waste the subject-matter of the suit. It also assumes that the suit is not compromised, and that in the course of the litigation neither party dies, becomes insolvent, marries, or requires a commission to issue. It is divided into eighteen chapters relating to the following subjects:—

I. The jurisdiction of the Courts and *res judicata*.
II. The place of suing.
III. Parties, their appearances, applications and acts.
IV. The frame of the suit, and the form of the plaint.
V. The institution of suits.
VI. Service of summons on the defendant.
VII. The appearance of the parties, and the consequence of non-appearance.
VIII. Written statements.
IX. The examination of the parties at the first hearing.

X. The admission, inspection, production, and impounding of documents.
XI. The settlement of issues.
XII. The disposal of the suit at the first hearing.
XIII. Adjournments.
XIV. Summoning witnesses.
XV. Examination of parties and witnesses.
XVI. Judgment and decree.
XVII. Costs.
XVIII. Execution of decrees.

Chapter I. Of the Jurisdiction of the Courts and Res Judicata.

The first question for a person seeking judicial relief is, whether his suit can be brought; whether, in other words, the Courts have jurisdiction to grant the desired relief.

Here the Code first declares generally that no person shall by reason of his descent or place of birth be in any civil proceeding exempt from the jurisdiction of any of the Courts[1]. This had been the law in the Bengal Presidency since the year 1836 in regard to all the civil courts except the Munsif's[2]. But this declaration does not affect special laws, such as have been provided for the care of the property and persons of minors[3], and for privileged persons, such as the late King of Oudh, and the families of the Nawáb of the Carnatic[4] and the Nawáb of Surat[5].

The Code then declares the jurisdiction to try all suits of a 'civil nature,' excepting suits of which their cognisance is barred, by any law for the time being in force; such, for instance, as the Limitation Act, or Act XVIII of 1850, which bars suits against judges for acts done by them in good faith[6] in the discharge of their judicial duties[7], or the Code of Criminal Procedure, sections 133, 140, 142, which prevent the civil Courts from interfering with the orders of magistrates for the removal of public nuisances[8], or the Code of Civil Procedure itself, sec. 244. The

[1] For the old legislation as to the persons amenable to civil jurisdiction, see Acts XI of 1836, sec. 2: XXIV of 1836, sec. 5: III of 1839, sec. 1: VI of 1843, sec. 7: III of 1850, sec. 1.

[2] It was extended to the Munsif's court in 1843.

[3] 2 N. W. P. 79, 82.

[4] Act XXXVII of 1858.

[5] Act XVIII of 1848.

[6] And see infra, sec. 288.

[7] 2 Mad. H. C. 396, 443: 3 Bom. H. C., A. C. J. 36: 5 Suth. Civ. R. 104, col. 1: 13 Suth. 13.

[8] See 2 Agra, 81: 13 Suth. 13. But as to a Magistrate's order concerning the interior of a *private* house, see 8 Suth. Civ. R. 239.

Other laws by which the cognisance of suits is barred are—Act XIII of 1857, secs. 13, 14 (quality etc. of opium delivered to Government): Act I of 1859, sec. 57 (suits by seamen for wages): Act IX of

regulation of ritual is not within the province of civil Courts[1]. But the Code explains that a suit in which the right to property or an office is contested is a suit of a civil nature, although the right may depend on the decision of questions as to religious rites or ceremonies[2]. In other words, the Courts do not meddle with matters of religion, except so far as such matters are inseparable from questions as to civil rights or liabilities. The rule corresponds with that followed by the English Courts with regard to dissenting religious bodies[3]. And the Courts will not give relief when by so doing they would recognise an immoral custom[4], as where the dancing-girls of a temple sue to enforce a monopoly of the gains of prostitution. The Courts cannot take cognisance of 'acts of state,' that is, acts done in the exercise of sovran powers[5] which do not profess to be justified by municipal law[6]. It must, however, be remembered that the Secretary of State in Council cannot in India claim on behalf of the Crown the prerogative of immunity from suit[7]; and where the act complained of professes to be done under the sanction of municipal law and in the exercise of powers conferred by that law, the circumstance that it is an act done by the sovran power, or by the delegate of that power, does not oust the jurisdiction of the Courts[8]. And a suit will not lie for costs awarded by a civil court, or for damages occasioned by a civil action, even though brought maliciously and without reasonable or probable cause[9]. The Code of Civil Procedure (unlike the Code of Criminal Procedure, sec. 55) contains no rule that a judge shall not try any case in which he is personally interested, except in case of necessity, where no other Judge has jurisdiction. That a judge of the High Court will refuse

Matters of religion.

Immorality.

Acts of state.

Costs or damages.

Trial by interested judge.

1859, sec. 16 (forfeitures and attachments): Act XXIII of 1871, secs. 4-7 (claims to pensions and grants): Act I of 1877, sec. 21 (contracts which cannot be specifically enforced): Act VI of 1878, sec. 17 (decisions of Collector as to treasure trove): Act XVII of 1878, secs. 1, 3, 4 (compensation for acts relating to ferries), and a large number of local enactments relating to encumbered estates, revenue matters, village cesses, hereditary offices, forests and forest produce, rent-suits. For the restriction of the interference of the Bombay Courts in caste questions, see Bom. Reg. II of 1827, sec. 21, and 2 Bom. 470: 6 Bom. 725: 11 Bom. 534.

[1] 5 Bom. 80, 81.

[2] The words 'or tenets' should have been added. See 5 Mad. 313.

[3] See *Cooper* v. *Gordon*, L. R., 8 Eq. 249: *Brown* v. *Curé of Montreal*, L. R., 6 P. C. 157.

[4] 1 Mad. 168.

[5] e.g. the powers of making peace and war, of concluding treaties, of seizing property by right of conquest.

[6] L. R., 2 I. A. 38; following 7 Moore, I. A. 476; and see 5 Mad. 273, dissenting from 1 Cal. 11. See, too, 3 All. 829, per Stuart C.J.

[7] 21 & 22 Vic. c. 106, sec. 65.

[8] 5 Mad. 282, per Turner C.J.

[9] 1 Bom. 467. But see *Churchill* v. *Siggers*, 3 El. & Bl. 938.

to try such cases, see Bourke, Rep. O. C. p. 273. For the English common law on this subject see *Dimes* v. *Grand Junction Canal Co.*, 3 H. L. Ca. 793: *Serjeant* v. *Dale*, L. R., 2 Q. B. D. 566, 567. We may leave this subject of jurisdiction with the remark that the so-called merger of torts in felony does not exist in India[1]. A Hindú or Mahomedan therefore whose civil rights have been infringed by an act which is also a non-compoundable offence is not bound to prosecute the offender before bringing his civil suit. Nor is his right to sue suspended until the offender is brought to justice. The Code should have contained rules, either by way of express enactment or of illustration, as to each of these matters.

Lis alibi pendens.

Section 12 then provides for the plea of *lis alibi pendens*, the *exceptio litis pendentis* of the civilians. It bars suits only where the matter in issue is also directly in issue in a previous suit between the same parties for the same relief in a British Indian Court having jurisdiction to grant it; and explains that the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action. It is founded on three English cases: *Foster* v. *Vassall*, 3 Atk. 589: *Devie* v. *Lord Brownlow*, 2 Dick. 611: *Behrens* v. *Sieveking*, 2 My. & Cr. 602.

Res judicata.

Section 13 treats of *res judicata*, a plea founded on the two maxims *Nemo debet bis vexari pro eadem causa* and *Interest rei publicæ ut sit finis litium*, and a subject of which the importance in a country inhabited by a litigious population is only equalled by the difficulty of dealing with it clearly, concisely and accurately in a legislative enactment.

As *res judicata* is a plea in bar, not a plea to the jurisdiction, the place of this section may be objected to; but the circumstance that the corresponding section 2 of Act VIII of 1859 stood in the forefront of that Code, and the convenience of having so important a clause in a prominent position seemed in this instance to outweigh considerations of logical arrangement. The principal clause and its first Explanation are founded on the definition in Livingston's code of evidence for the State of Louisiana, § 192. '*Res judicata* is whatever has been finally decided by a Court of competent jurisdiction—proceeding according to the forms of law—by a valid sentence—on a matter alleged, and either desired or expressly or impliedly confessed by the other; and it is conclusive evidence of that which it decides, between the same parties or those that represent them, litigating for the same thing, under the same title and in the same quality.' But the Indian Code provides that in the former suit the matter in issue must have been not

[1] See Vol. I. of this work, p. 18.

only substantially, but directly in issue. The second, third, fourth and fifth Explanations rest on decisions of English or Indian Courts. But the second Explanation extends to matters which might or ought to have been made ground of attack in the former suit. The third declares that any relief claimed on the plaint, which is not expressly granted by the decree, shall be deemed to have been refused. The fourth declares that a decision is 'final' when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. An appealable decision may be 'final' until the appeal is made. The fifth lays down that when persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall be deemed to claim under the litigants. The sixth is taken from Livingston's code, just mentioned, § 198, and should be transferred to the Evidence Act. The section is not exhaustive as to the effect of *res judicata*. It does not deal with the case of judgments *in rem*, nor with that of parties represented by, though not claiming under, the parties to the former suit[1].

Foreign judgments.

Section 14 declares, in general accordance with the rules prevailing in England[2], when a foreign judgment shall not bar a suit in British India. This section provides by implication that a foreign judgment shall be a bar in certain cases to a suit on the same cause of action, but not to a suit upon the judgment[3]. Whether such suits will lie in India, when the judgments sued on are made by Courts situate in Native States, has not yet been settled[4]. The Madras High Court holds that such suits will lie; while the Bombay High Court infers, from the power given to the Government of India by section 434 to declare that the judgments of Native Courts may be executed as if they had been passed by British Courts, that the Legislature did not intend that suits should be brought on the judgments of Native Courts. It is hard to see how such an inference can fairly be drawn. The Code makes no distinction between the Courts of Native States and other foreign Courts, except that the former Courts are or may be treated more favourably. As regards suits on other foreign judgments, the Indian Courts

[1] As to this see 14 Moore, I. A. 376: 6 Bom. 715.

[2] See 2 Smith's Leading Cases, 869, but consider, as to clause (*b*), *Godard* v. *Gray*, L. R., 6 Q. B. 139.

[3] 6 Mad. 275. See form of plaint, infra, Sched. IV. no. 27.

[4] See 7 Mad. 105, 164, dissenting from 6 Bom. 295 and 8 Bom. 595. Suits on judgments passed by the French Courts at Chandernagore, Mahé and Pondicherry have often been brought in Calcutta and Madras; see 4 Suth. Civ. R. 108: 15 Suth. Civ. R. 500: 8 Mad. H. C. 14: 2 Mad. 337: 2 Mad. 400.

would follow the English rules, which have recently been stated by Fry J. as follows[1]:—

The Courts of England consider the defendant bound—

(*a*) Where he is the subject of a foreign country in which the judgment has been obtained:

(*b*) Where he was resident in the foreign country when the action began:

(*c*) Where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued:

(*d*) Where he has voluntarily appeared:

(*e*) Where he has contracted to submit himself to the forum in which the judgment was obtained:

(*f*) And possibly, if *Becquet* v. *MacCarthy*, 2 B. & Ad. 951, be right, where the defendant has, within the foreign jurisdiction, real estate in respect of which the cause of action arose while he was within that jurisdiction.

Moreover, in a case reported in 2 Mad. 400, Turner C.J. decided the following points:—

(1) Where a defendant sued in a foreign tribunal takes no objection to the jurisdiction, he cannot afterwards question that jurisdiction.

(2) Mere irregularity of procedure on the part of a foreign tribunal, which ordinarily proceeds in accordance with the recognised principles of judicial investigation, is not sufficient ground for refusing to give effect to its judgment.

(3) Where the limitation-law bars the remedy but does not extinguish the right, a foreign judgment in a suit on a contract is not open to the objection that the suit was time-barred in the country where the contract was made.

The judgments of all Courts situate in England, with the exception of the Judicial Committee of the Privy Council, are 'foreign judgments' within the meaning of the Code; and the Bombay High Court has treated as a foreign judgment the call-order of the Court of Chancery on a contributory of a company registered in England and being wound up under the authority of the latter Court[2].

The Limitation Act (Sched. II, art. 117) provides a six-years limitation for suits on foreign judgments.

[1] *Rousillon* v. *Rousillon*, 14 Ch. Div. 371. And see *Obicini* v. *Bligh*, 1 Moore & Scott, 477: *Vanquelin* v. *Bouard*, 15 C. B., N. S. 341: *Scott* v. *Pilkington*, 2 B. & S. 11: *Abouloff* v. *Oppenheimer*, 10 Q. B. Div. 295: *Grant* v. *Easton*, 13 Q. B. Div. 302: and the note to the *Duchess of Kingston's Case*, 2 Smith, L. C., 9th ed., 812. As to the desirability of giving credit to foreign judgments, see 1 Mad. 198, per Holloway J.

[2] 8 Bom. H. C., O. C. J. 200.

Chapter II. Of the Place of Suing.

Assuming that his suit can be brought, the next question for a person seeking judicial relief is, to which Court he ought to resort. The Code answers this by declaring (sec. 15) that 'every suit shall be instituted in the Court of the lowest grade competent to try it.' The competence here referred to is determined by the actual value of the plaintiff's claim or its subject-matter (the Suits Valuation Act, VII of 1887, the Provincial Small Cause Courts Act, IX of 1887, the Presidency Small Cause Courts Act, XV of 1882), and the local laws regulating the jurisdiction of the Courts. These laws are now as follows:—

In Bengal, the North-Western Provinces and Assam, Act XII of 1887, secs. 18–25.

In Madras, Act III of 1873, amended by Act XXI of 1885: Madras Reg. IV of 1816, sec. 5.

In Bombay, Act XIV of 1869: Act II of 1864 (Aden): Bom. Act XII of 1866 (Sind).

In the Panjáb, Act XVIII of 1884.

In Oudh, Act XIII of 1879.

In the Central Provinces, Act XVI of 1885.

In Burma, Act XVII of 1875.

In Coorg, Reg. II of 1881.

In Ajmer and Merwára, Reg. I of 1877.

Forum depending on the subject-matter.

Section 16 specifies the suits whose forum is fixed with reference to the subject-matter. Such are suits relating to immoveable property and suits for moveables which have been distrained or attached. But suits to obtain compensation for wrong to immoveable property may be optionally instituted in the Court within whose jurisdiction the defendant resides. Exceptions are made in the cases of suits to obtain relief respecting land where, as in the case of a specific performance of a contract of sale, the relief sought can be obtained by the personal obedience of the defendant. Such suits, as well as suits for compensation for wrongs to immoveable property, may be brought either in the Court which has jurisdiction over the land or in the Court which has jurisdiction over the person of the defendant.

Forum depending on defendant's residence etc., or place where cause of action arose.

Section 17 deals with the suits which must be instituted where the defendant resides, carries on business, or personally works for gain, or where the cause of action arose. Where there are several defendants, only some of whom reside etc. within the local limits of the Court's jurisdiction, the suit cannot be instituted in the Court without either (*a*) the leave of the Court, or (*b*) the acquiescence of the non-residents.

Section 18 provides for suits for compensation for wrongs to person or moveable property where the wrong is done in one jurisdiction and the defendant resides in another.

Section 19 provides for suits for immoveable property situate in a single district but within the jurisdiction of different Courts, and for the case where the property is situate in different districts. Power is given by section 20 to stay proceedings where all the defendants do not reside within the jurisdiction.

Transfer of suits in subordinate Courts.

Section 25 provides for the transfer by the High Court or District Court of suits pending in a subordinate Court of first instance or of appeal. This applies to suits in Courts of Small Causes which are declared by section 2 to be 'subordinate' to the High Court and District Court.

Chapter III. Of Parties and their Appearances and Acts.

Parties.

Having ascertained the Court to which he must resort, the third question for the person seeking judicial relief is, for and against what parties such relief must be claimed.

The first eight sections of this chapter are taken, with some modifications, from the orders framed in England under the Supreme Court of Judicature Act, 1875, and give a wide latitude as to the persons who may be made parties. Section 30 declares that when there are numerous parties having the same interest in one suit, one or more of them may, with the permission of the Court, sue or be sued, or may defend, in such suit on behalf of all parties so interested. A caste, for instance, may be represented by a group of its members[1]. Any person on whose behalf a suit is so instituted or defended may apply to the Court to be made a party (sec. 32), and the Court is empowered to give the conduct of the suit to such plaintiff as it thinks fit. A like power exists in England under 15 & 16 Vic. c. 86, s. 42, rule 7. Save upon the application of either party on or before the first hearing, the Court cannot order the name of any party to be struck out. But it may at any time, with or without such application, add parties and order any plaintiff to be made a defendant, or any defendant to be made a plaintiff (sec. 32). It often happens that a nonjoinder or misjoinder is not discovered till after issues are settled and the evidence is gone into; and the Judge should have full power to correct the mistake whenever it is found out. The objections for want of parties, for joinder of parties who have no interest, or for misjoinder, if not taken before the first hearing, will be deemed to have been waived (sec. 34).

[1] 11 Bom. 535, per West J.

Chapter IV. Of the Frame of the Suit.

Section 42 declares that every suit shall as far as practicable be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Claims ought not to be split.

'Were the rule otherwise, a man might be sued repeatedly in respect of different parts of the same matter, and conflicting judgments might be pronounced regarding separate portions of the same property, included in the same cause of action. And as the value of the property claimed by the plaint determines the class of judges by which a suit is cognisable and the remedies of the parties in an appeal, a suit might be split up, so that each branch of it should be decided by a judge of a lower class than that by which, with reference to the value of the whole property in litigation, it ought to be decided, and the right of the parties to appeal would be unfairly limited[1].'

The suit must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action upon which he sues; but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If, however, he does so, he cannot afterwards sue in respect of the portion so relinquished. When he is entitled to more than one remedy in respect of the same cause of action, he may sue for all or any of his remedies; but if he omits, except with the leave of the Court obtained before the first hearing, to sue for any of such remedies, he cannot afterwards sue for the remedy so omitted (sec. 43).

Joinder of causes of action.

After these provisions, the Code contains four sections as to the joinder of causes of action and multifariousness, i.e. the joining in one suit of several distinct and naturally dissimilar claims upon the same defendant or several defendants[2]. These sections are taken from the orders framed in England under the Supreme Court of Judicature Act, 1875 (Order xviii, rr. 2 and 5). The rule respecting the claims that may be joined with a suit for the recovery of land places suits to obtain declarations of title to land on the same footing as suits to recover it, and enables a mortgagee to join with either of those suits claims to enforce any of his remedies under the mortgage. This is in accordance with a decision of the Master of the Rolls on the corresponding English rule; see 3 Ch. D. 629: 22 Ch. D. 281. The Code (sec. 44) expressly provides for joining with claims by or against a legal representative, claims which he was personally entitled to, or liable for, jointly with the deceased

[1] W. Macpherson, *New Civil Procedure for British India*, 1871, p. 54, citing 2 Suth. 148.

[2] See 14 Cal. 681.

person whom he represents, e. g. on a promissory note jointly executed by the deceased and the person who becomes his executor.

When causes of action are united, the jurisdiction of the Court as regards the suit depends on the amount or value of the aggregate subject-matter at the date of instituting the suit (sec. 45).

Chapter V. Of the Institution of Suits.

The plaint.

The Code here provides that every suit shall be commenced by plaint, and contains rules as to the language and contents of the plaint, as to its signature and verification, and as to rejecting it, amending it, or returning it for amendment. As to its contents, the Code declares that, if the plaintiff has allowed a set-off or relinquished a portion of his claim, the plaint must show the amount so allowed or relinquished. Where he sues in a representative character, the plaint must show that he has taken the steps necessary to enable him to sue; and if the cause of action arose beyond the period ordinarily allowed for instituting the suit, the plaint must show the ground of exemption from such law (sec. 50).

Copies of plaint.

Concise statements.

When the plaint is admitted, section 58 requires the plaintiff to present as many copies of it as there are defendants, unless where the Court, by reason of the length of the plaint, the number of the defendants etc., allows him to present a like number of concise statements of the claim made and the remedy required.

When the plaintiff sues upon a document in his possession, he must produce it in Court when the plaint is presented, and deliver the document or a copy to be filed. The object is to prevent forgery and fraudulent alteration during the trial, and not, as is sometimes supposed, to enable the Court to refer to documents so filed as if they were thereby made evidence without further proof.

Suits on lost bills.

Section 61 provides for suits on lost negotiable instruments, and is taken from Act V of 1866, sec. 14, the Indian equivalent of 17 & 18 Vic. c. 125, s. 87=45 & 46 Vic. c. 61, s. 70.

The chapter ends with the provision, sec. 63, that a document which ought to be, but is not, produced when the plaint is presented shall not without the leave of the Court be received in evidence on his behalf at the hearing. But this does not apply to documents handed to a witness merely to refresh his memory, or produced for cross-examination of the defendant's witnesses, or in answer to any case set up by him.

Chapter VI. Of the Issue and Service of Summons.

Issue of summons.

When the plaint has been registered and the copies or concise statements required by section 58 have been filed, a summons may be

issued to each defendant (sec. 64), and if the Court thinks fit, he must appear in person, provided he resides within the local limits of the Court's ordinary jurisdiction, or within fifty or, where there is a railway communication for five-sixths of the distance, two hundred miles from the court-house. The Court determines when issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit.

Service of summons.

Sections 72–92 contain elaborate provisions as to the service of the summons. The object is to make sure, as far as possible, that the summons comes to the knowledge of the defendant. When it is considered how large a proportion of the suits in British India are decided *ex parte* owing to the defendant's failure to appear, the importance of this part of the Code can hardly be exaggerated. The Code of 1859, sec. 55, provided that when the defendant could not be found (i.e. when the process-server *said* that he could not be found), and there was no one else on whom service could be made, the serving officer was to fix a copy of the summons on the outer door of the house in which the defendant was dwelling, but it omitted to say what the effect of this fixing was to be, nor did it take any precautions against the fraud and indolence of process-servers. The new Code provides as a rule that personal service shall be proved by the written acknowledgment of the person served (sec. 79), and where such proof is impossible, that the serving officer should fix a copy of the summons on the defendant's dwelling and return the original with an endorsement stating the circumstances (sec. 80). He is then examined on oath touching his proceedings (sec. 82). And the Court may then order substituted service if it is satisfied that the summons cannot be served in the ordinary way.

Privileged defendants (ss. 640, 641).

In the case of privileged defendants, sections 91 and 92 provide for substituting for a summons a letter sent by post or by a special messenger.

Chapter VII. Of the appearance of the parties and consequence of non-appearance.

The Code then lays down rules of procedure in the cases where both parties attend (sec. 96); where the summons has not been served in consequence of the plaintiff's failure to pay the fees for serving it (sec. 97); where neither party appears (secs. 98, 99); where the plaintiff only appears (sec. 100); where the defendant only appears (sec. 102); where the defendant residing out of British India does not appear (sec. 104); where one of several plaintiffs or defendants does not appear (secs. 105, 106). A dismissal for default or a decree *ex parte* is no more than a just consequence of

Dismissal for default.

Decree *ex parte.*

the failure to appear, where it is voluntary; and where it is involuntary, there is a remedy in the powers given to the Court by sections 101, 103 and 108.

The chapter concludes with sections (108, 109) as to the setting aside the decrees passed *ex parte* against the defendant. No such decree will be set aside without notice to the opposite party.

Chapter VIII. Of Written Statements and Set-off.

Pleadings.

The present Code, like Act VIII of 1859, requires no written pleading except the plaint. It was admitted on all hands that in the large majority of cases coming before the Courts, namely, suits for debt, written pleadings of any other kind are useless. This had been proved in England by the experience of the County Courts and in India by the experience of the Presidency Courts of Small Causes and the military Courts of Request. But in suits relating to immoveable property and in other cases of complexity and difficulty[1], it is often convenient to have the written statements of the parties. The Code therefore here permits the parties at any time before or at the first hearing to tender written statements of their respective cases, and the Court may itself at any time require a written statement from any of the parties and receive one for the purpose of answering a statement so required. These statements must not be argumentative (sec. 114), and the Court is empowered to deal with them when they violate this rule or are prolix or irrelevant (sec. 116).

Written statements.

Set-off.

Sections 111, 216 and 221 were intended to contain the Indian law of set-off, or the compensation of one debt for another, and to differ from the present English rules on this subject (Orders xix. r. 3, xxi. r. 17). In England, set-off is not confined to pecuniary claims, and in the case of such claims the power of set-off is not limited to debts. Claims for unliquidated damages may now be set off in all Courts against debts, debts against damages, and damages against damages. But under the Indian Code set-off is confined to suits for the recovery of money, and the following four requirements must be fulfilled:—

(*a*) The sum of money claimed to be set-off must be ascertained:

(*b*) It must be legally recoverable by the defendant from the plaintiff:

(*c*) In such claim both parties must fill the same character as they fill in the plaintiff's suit.

(*d*) The amount claimed to be set-off must not exceed the pecuniary limits of the Court's jurisdiction.

If these four requirements are fulfilled, the Court sets-off one

[1] See, for instance, the Patent Act, XV of 1859, sec. 34.

debt against another, and such set-off has the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce final judgment in the same suit both on the original and on the cross-claim. But the decisions of the High Courts on this section make it hard to say what the law of India as to set-off is at present. The pleader's lien upon the amount decreed is expressly saved from the effect of set-off. This saving was suggested by *Pringle* v. *Gloag*, 10 Chan. Div. 676, affirmed by Order lxv. r. 14 [1].

Chapter IX. Of the Examination of the Parties at the first hearing.

At the first hearing the Court ascertains from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and also ascertains from each party or his pleader whether he admits or denies allegations of fact made in the written statement of the opposite party and not admitted or denied by the party against whom they are made. The Court records such admissions and denials (sec. 117). The Code intentionally omits to provide that allegations of fact in written statements, if not denied, shall be taken to be admitted. Such a provision would have been dangerous in the case of untrained pleaders.

At any hearing the Court may examine orally any party appearing in Court or any companion of his able to answer material questions relating to the suit.

On the corresponding sections of the Draft Code of 1859 the Commissioners observe: 'The object of the first examination is merely to enable the Judge to ascertain what is the matter in dispute between the parties. In the interrogatories which he may put to them for this purpose some allowance must be made for misapprehension on both sides. It is also manifest that statements made at this examination stand on a different footing from evidence given in a trial of fact. After the Judge has once ascertained and recorded the points in dispute, the parties may be examined to them like other witnesses.'

Chapter X. Of Discovery, and on the Admission, Inspection, Production etc. of Documents.

Interrogatories.

The object in compelling what is called 'discovery' is to procure an admission of the case made by the plaint, either in aid of proof or to supply the want of it, and to avoid expense [2]. The first seven sections of this chapter correspond with the

[1] See *Edwards* v. *Hope*, 14 Q. B. D. 922.

[2] Wigram, Points in the Law of Discovery, § 2. As to discovery in aid of execution, see sec. 267, infra.

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English Order xxxi. rules 1–10, from which they were immediately taken. The ultimate source of the practice of putting special interrogatories is, no doubt, the civil law[1]. The Code here empowers parties at any time to deliver interrogatories in writing. But the leave of the Court is always required, there being no exception, as in England, where the plaintiff seeks relief on the ground of fraud or breach of trust. And in deciding on any application for leave the Court should take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions or to produce documents relating to the matter in question (Order xxxi. r. 2). Sections 123, 125, 127 provide for inquiring into the propriety of exhibiting interrogatories; for the costs of improper interrogatories; for making objections to answering interrogatories, and for compelling persons to answer sufficiently. No defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has already tendered a written statement which has been received and placed on the record. Otherwise the plaintiff would be delayed, without knowing the nature of the defence, until he had answered.

Admission of documents.

As to admission of documents, either party may, not less than ten days before the hearing, require the other party to admit the genuineness of any document material to the suit. The Evidence Act, sec. 58, then applies. The party refusing to give the admission is chargeable with the expense of proving the document, unless the Court thinks there were good reasons for the refusal (sec. 128). A similar clause is contained in the Common Law Procedure Act, 15 & 16 Vic. c. 76, secs. 117, 118. But the Code requires the demand for admission to be served through the Court.

Discovery of documents.

Discovery is not confined to facts resting merely in the knowledge of the defendant. The Court is empowered at any time during the pendency of the suit to order discovery of documents relating to any matter in question in the suit; but a party must apply for a like order, if at all, before the first hearing (sec. 129). The Court may also at any time compel production of documents relating to any such matter. The latter power, which goes far beyond the former practice of the Court of Chancery[2], was suggested by Order xxxi. rule 11, under the Judicature Act. The Indian Courts will probably not compel the defendant to produce documents relating solely to his title.

[1] See Story, Equity Pleading, § 39.

[2] See *Hardman* v. *Ellames*, 2 My. & K. 755, and Story, Equity Pleading, § 859.

Sections 131, 132, 133 provide for inspecting and copying of specified documents not relating solely to the party's own title. **Inspection of documents.**

When any discovery or inspection is objected to, and the Court is satisfied that the right to such discovery or inspection depends on the determination of any question in dispute in the suit, section 135 (taken from the English Order xxxi. rule 19) empowers the Court to order that question to be first determined.

Whoever disobeys any order to answer interrogatories, or for discovery or inspection, which has been served personally upon him, is made by section 136 guilty of an offence under the Penal Code, sec. 188. He is also liable, if a plaintiff, to have his suit dismissed: if a defendant, to be placed in the same position as if he had not defended.

Section 137 enables the Court of its own accord, or on the application of a party, to send for the records of any other suit or proceeding and to inspect the same. This was originally taken from the draft code of Messrs Mills and Harington. But such an application must be supported by an affidavit showing either that the applicant cannot without unreasonable delay or expense obtain an authenticated copy or that the production of the original is necessary for the ends of justice. To stop a practice which existed in the Mufassal, the Code here declares that the power to send for records shall not enable the Court to use in evidence any document which would be inadmissible in the suit. **Power to send for records.**

In order to preclude questions on appeal as to whether a document was in evidence or not, section 141 provides that no document shall be placed on the record unless it has been regularly proved or admitted.

The provisions in this chapter as to documents apply, so far as may be, to all other material objects producible as evidence (sec. 145). **Material objects.**

The practice as to the admission of documents has recently been extended in England to the admission of certain facts; and the Code should provide, in accordance with the English Order xxxii. r. 4, that if it be made to appear to the Judge that one of the parties was, a reasonable time before the first hearing, required in writing to admit any specific fact, and without reasonable cause refused to do so, the Court should either disallow to such party or order him to pay (as the case may be) the costs incurred in consequence of such refusal. Notice to admit facts would in many cases supersede interrogatories and thus save expense and delay. **Notice to admit facts.**

Chapter XI. Of the Settlement of Issues.

Settling issues.

In the course of administering justice between litigants there are two successive objects,—to ascertain the subject for decision, and to decide[1]. The Code having provided for each of the parties stating his own case, now provides for collecting, from the opposition of their statements, the points of the legal controversy. It explains the term 'issues,' and then requires the Court, at the first hearing of the suit,

(*a*) to read the plaint and written statements (if any);

(*b*) to examine the parties where necessary, e.g. where the facts are not sufficiently stated in the plaint (6 Ben. 274);

(*c*) to ascertain upon what material points of fact or of law the parties are at variance; and

(*d*) to frame and record the issues on which the right decision of the case appears to depend—not those which the parties may themselves have selected (2 Bom. H. C. 164).

The Code also directs that when issues both of fact and of law arise in the same suit and the Court thinks that the case may be disposed of on the issues of law only, the issues of law shall be tried first. The object of this is to save expense and to prevent cases being remanded for trial of issues of fact which in the result prove wholly irrelevant. The Court itself frames the issues, (1) from the allegations made on oath by the parties or their friends, or made by their pleaders; (2) from allegations made in the plaint, the written statements, or in answer to interrogatories; and (3) from the contents of documents produced by either party.

Here the Indian differs importantly from the English practice, which is thus prescribed by Order XXXIII, r. 1: 'Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined the parties may be directed to prepare issues, and such issues shall, *if the parties differ*, be settled by the Court or a Judge.' For the purpose of framing the issues correctly, the Court may compel the attendance of witnesses and the production of documents. The Court is empowered to amend, add, and, at any time before passing the decree, strike out issues.

Issues stated by parties.

When the parties are agreed as to the question of fact or of law to be decided, they may state it in the form of an issue and agree in writing to be bound by the finding of the Court (sec. 150, 151). The rules on this head correspond with sections 142, 143 of the Code of 1859, which were taken, with some alterations, from the Common Law Procedure Act, 1852, sections 42–45, reproduced in the present Order xxxiv. rr. 9–12.

[1] Stephen's Principles of Pleading, 7th ed. p. 1.

Chapter XII. Disposal of the Suit at first hearing.

If at the first hearing it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment; and where there are several defendants, and any one of them is not at issue with the plaintiff, the Court may at once pronounce judgment for, or against him, and the suit proceeds only against the other defendants. But in by far the greater number of suits the whole matter in dispute may be resolved into one or more simple issues, on which the parties may at once go to trial. The Code therefore provides that when the parties are at issue, and issues have been framed by the Court, and the Court is satisfied that no further argument or evidence than the parties can at once supply is required, the Court may determine such issues, and pronounce judgment (sec. 154). Judgment at first hearing.

When the summons has been issued for the final disposal of the suit and either party fails to produce his evidence, the Court may either pronounce judgment at once, or frame and record issues and then adjourn the suit for the production of the evidence necessary for deciding those issues (sec. 155).

Chapter XIII. Of Adjournments.

The Court may, if sufficient cause be shown[1], at any stage of the suit, grant time to the parties, and adjourn the hearing, making such order as it thinks fit with respect to the costs of adjournment. But great encouragement had been given to perjury and subordination of perjury, great delays, expense and inconvenience had been caused, in consequence of the facilities formerly enjoyed of obtaining adjournments, especially in the hearing of evidence. The Code therefore provides (sec. 156) that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment to be necessary for reasons recorded by the Judge with his own hand. Power to adjourn.

Chapter XIV. Of the summoning and attending of Witnesses.

The parties may, after the summons has been delivered for service on the defendant, obtain summonses to persons whose attendance is required either to give evidence or to produce documents; but in all such cases the applicant must, before the summons Summonses to witnesses.

[1] As, for instance, where the defendant surprises the plaintiff by a written statement filed the day before the day fixed for final disposal, 7 Suth. Civ. R. 84.

is granted, pay into court the travelling and other expenses of the person to be summoned. These provisions derive ultimately from Act XIX of 1853, sec. 12. The Court issues summonses as a matter of course, except where there is reason to think they are applied for merely to obstruct the course of justice[1], or the application is made so late that the witness could not possibly appear before the applicant's case is closed[2].

Absconding witnesses.

When a witness absconds, his property may be attached; but the serving-officer must previously be examined on oath touching the non-service, and if the witness appears, the attachment may be withdrawn. Where a witness on whom a summons has been served disobeys the summons, the Court may sentence him to fine not exceeding rs. 500. He is also liable, when personal service has been made, to a civil suit for damages[3].

Limit of distance.

No witness is bound to attend in person unless he resides (*a*) within the local limits of the ordinary jurisdiction of the Court, or (*b*) without such limits and at a place less than fifty or, when there is railway communication for five-sixths of the distance, two hundred miles from the Court-house. It is obvious that in a country nearly as large as Europe there must be some limit beyond which witnesses should not be required to travel even by railway.

Lunatic witnesses.

No person known to be of unsound mind should be summoned as a witness without the previous consent of the Court. Act II of 1855, sec. 14, contained a rule to this effect. But it was repealed by the Evidence Act of 1872, and nothing was put in its place.

Refusal to give evidence.

Parties.

If any party to a suit present in court refuses without lawful excuse when required by the Court to give evidence or produce documents, the Court may pass a decree against him, or make any order as to the suit that it thinks fit; and whenever any party to a suit is summoned to give evidence or produce a document, the rules as to witnesses contained in the Code apply to him. It is no longer necessary to serve him with notice to show cause why he should not attend.

Chapter XV. Of the hearing of the Suit and examination of Witnesses.

On the day fixed for the hearing, or to which the hearing has been adjourned, the party having the right to begin states his case and produces his evidence. The Code here states the rules as to the *ordo*

[1] 14 Suth. Civ. R. 66, 67. There should have been a clause equivalent to the second proviso to sec. 216 of the Code of Criminal Procedure, supra, p. 141.

[2] 9 Suth. Civ. R. 530: 14 ibid. 493: 25 ibid. 71.

[3] See Act XIX of 1853, sec. 26, and Act X of 1855, sec. 10.

incipiendi, or, as it is not very accurately[1] called, the right to begin. The plaintiff, as a rule, begins. But the defendant begins where he admits the facts alleged by the plaintiff and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks. The corresponding English rules will be found in Taylor on Evidence, §§ 350, 353, 356. The other party then states his case and produces his evidence, if any, and the party beginning, if he chooses. replies.

Right to begin.

The witnesses must be examined orally in open court in the presence and under the personal direction and superintendence of the Judge (sec. 181), but this of course is subject to the provisions contained in section 192, chapter XVI and section 383; and in appealable cases the evidence is taken down in writing in the language of the Court in the form of a narrative, read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders. The Judge then corrects the narrative, if necessary, and signs it (sec. 182). The object of these provisions, as of the corresponding section (172) of the Code of 1859, is to relieve the administration of justice in India of one of its chief scandals, the careless and perfunctory method of taking evidence[2]. Another of these scandals is the constant production of inadmissible evidence, and the Code should contain a clause like that in section 298 of the Code of Criminal Procedure, empowering the Judge to prevent the production of such evidence, whether it is or is not objected to by the parties.

Examination of witnesses.

When English is not the language of the Court, but the parties do not object to have such evidence as is given in English taken down in that language, the Judge may so take it down in his own hand (sec. 185). This provision saves expense in translating, and gives the appellate Judge the same material as the Judge of first instance.

Taking down evidence in English.

In unappealable cases, the Judge, as the examination of each witness proceeds, makes with his own hand a memorandum of the substance of the deposition; or, when he is unable to do so, causes the memorandum to be made in writing from his dictation in open Court (sec. 189).

Memorandum.

It often happens in India that a Judge who has partly heard a case is unable to decide it in consequence of being transferred to another district. The Code of 1859 made no provision for this case, and it was consequently held that the Judge's successor was

Transfer of Judge.

[1] The expression assumes that beginning is always an advantage, whereas it may be quite the reverse, Best on Evidence, sec. 637.

[2] Macpherson, C. P. 200.

bound to recall and examine the witnesses *de novo*, unless the parties consented to his proceeding upon the evidence already recorded. The present Code therefore provides that when the Judge taking down any evidence is removed from the Court before the conclusion of the suit, his successor may deal with the evidence as if he himself had taken it down (sec. 191).

Section 192 provides for the examination of a witness *de bene esse*.

The Court may at any stage of the suit recall and re-examine any witness who has not departed (sec. 193).

Oaths and affirmations.

The Code does not provide that witnesses shall give their evidence on oath or affirmation. Act X of 1873, sec. 5, however, declares that oaths or affirmations shall be made by all witnesses, that is, all persons who may lawfully be examined or give or be required to give evidence by or before any Court or person having by law or consent of parties to examine such persons or to receive evidence. Where the witness is a Hindú or Muhammadan, or has an objection to making an oath, he makes, instead, an affirmation. For intentionally giving false evidence, witnesses are punishable under the Penal Code, sec. 193.

Protection of witnesses.

The Code is also silent as to the protection of witnesses from the liability to which persons are ordinarily subject for defamatory statements. This is left to be dealt with by the Penal Code, secs. 52 and 499, ninth exception [1]. Under Indian legislation a witness' privilege is much less extensive than under the English law [2]. But the Calcutta High Court has ruled (and the Judicial Committee has approved of the ruling) that witnesses who have given evidence cannot be sued for damages in respect thereof [3]. As to their exemption from arrest under civil process, see infra, section 642.

Chapter XVI. Of Affidavits.

Power to order facts to be proved by affidavit.

This chapter empowers the Court at any time, *for sufficient reason*, to order any particular fact to be proved by affidavit. This instrument was formerly unknown in the Mufussal. In uncontested cases and in applications of an urgent and provisional character the affidavit is a useful mode of taking evidence. And when sifted by cross-examination, as it is always liable to be (sec. 195), it is not more likely to mislead than oral evidence. 'In point of fact,' as Mr. Hobhouse said [4], 'one who cross-examines on affidavits has a considerable advantage, in that his enemy has

[1] See Vol. I of this work, pp. 103, 288.

[2] That in England a witness is absolutely privileged as to anything he may, as such, say in reference to the inquiry, see *Seaman* v. *Netherclift*, 2 C. P. D. 53.

[3] 11 Ben. 328.

[4] Abstract of Proceedings, 1876, p. 244.

written a book, and a book which he has had time to study before he comes to cross-examine.' The Code therefore provides that evidence may be given by affidavit upon any application; indicates the matters to which affidavits should be confined, and specifies the officers by whom the oaths of declarants may be administered. The attendance of declarants for cross-examination must be in Court, unless they are exempt under section 640 or 641, or the Court otherwise directs. The costs of every affidavit containing impertinent matter are, as a rule, paid by the party producing the same (sec. 196); but when such matter is small in amount, the Court may exempt him from such costs.

The Evidence Act does not apply to affidavits; and as answers to interrogatories are affidavits (4 Cal. 836), it seems also inapplicable to such answers. The Code, sec. 647, empowers the High Court to make rules for the admission, in miscellaneous proceedings, of affidavits as evidence. But there is no such power in the case of suits and appeals.

The Code should have laid down some rules as to the form of an affidavit, e.g. that it should be drawn up in the first person and divided into paragraphs numbered consecutively, and each, as nearly as may be, confined to a distinct portion of the subject: that it should state the description and true place of abode of the deponent, etc.

Chapter XVII. Of Judgment and Decree.

The judgment.

After the oral evidence has been taken, the documentary evidence (if any) produced, and the parties heard, the Court pronounces a written judgment either at once or on some future day of which due notice must be given (sec. 198). The judgment is dated and signed by the Judge in open court at the time of pronouncing it, and cannot be altered or added to save to correct verbal errors, or to supply some accidental defects, not affecting a material part of the case, or on review (sec. 202). The judgments of the Courts of Small Causes, from which there is no appeal, need not contain more than the points for determination, and the decision thereupon. The judgments of all other Courts must contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (sec. 203): otherwise the appellate Court would not have the assistance it is entitled to expect from the Court below. Every judgment must direct by whom the costs of each party must be paid, and whether in whole or in what part or proportion (sec. 219). Where issues have been framed, the Court must, as a rule, state its finding or decision, with the reasons thereof, upon each separate issue (sec 204).

The decree.

The decree follows the judgment, and the Code should have contained an express provision to this effect. The decree bears date the day on which the judgment was pronounced. It must agree with the judgment, it states the number of the suit, the names and description of the parties, the particulars of the claim, the relief granted, or other determination of the suit, and, lastly, the amount of costs incurred, and by whom and in what proportion such costs are to be paid[1].

Alteration of decree.

Whether a decree could be altered by consent of parties was a question on which opinions conflicted. Section 210 of the Code enables the Court, after passing a decree for payment of money, on the application of the judgment-debtor, and with the consent of the decree-holder, to order that the money be paid by instalments on such terms as it thinks fit; and where any decree is at variance with the judgment, or contains any clerical or arithmetical error, sec. 206 enables the Court, on the motion of any party, to amend the decree. But, save as provided by sections 206 and 210, no decree can be altered at the request of parties.

The Code then gives special rules as to the decrees in suits for immoveable property (secs. 207 and 211); for moveable property (sec. 208); for money due to the plaintiff (secs. 209 and 210); for mesne profits (sec. 212); for the administration of property under the decree of the Court (sec. 213); to enforce a right of pre-emption (sec. 214); for dissolution of partnership (sec. 215); for an account between principal and agent (sec. 215A); and, lastly, when a set-off has been allowed (sec. 216).

Chapter XVIII. Of Costs.

Power to give costs.

The Court has full power to give and apportion costs of every application and suit in any manner it thinks fit[2], and may exercise this power even where it has no jurisdiction to try the case. This discretion is restricted by the special rules in ss. 100, 123, 366, 373, 379, 452, and 532. Wherever the Court directs that the costs shall not follow the event,—i. e. shall not be paid to the successful litigant,—the Court must state its reasons in writing. Every order relating to costs which does not form part of a decree may be executed as if it were a decree for money (sec. 220). The Court may direct that the costs payable to *A* by *B* shall be set-off against a sum admitted or found to be due from *A* to *B* (sec. 221). Lastly, the Court may give interest on costs at any rate not exceeding six per cent., and may direct that costs with or without interest be paid out of or charged upon the subject-matter of the suit.

As to appealing on the subject of costs, see Ben. F. B. 496:

[1] 10 Moore, I. A. 563. [2] See, besides s. 220, ss. 20, 26, 47, 53, 101, 128, 454.

6 Ben. 581: 8 Cal. 91: 12 Cal. 271. The rule in Calcutta seems to be that when costs form part of a decree or order, and the decree or order is appealable, the part of it relating to costs is appealable also, and to the same extent as the decree or order itself. The Code designedly omits to provide when alone decisions on this subject shall be appealable. To do so would, it was thought, deprive the appellate Courts of a power often usefully exercised in controlling the discretion of the Courts of first instance. The cases of a next friend and a guardian *ad litem* ordered to pay costs are specially provided for by sec. 588, cl. (22). Appealing on subject of costs.

Chapter XIX. Of the Execution of Decrees.

The matter of this long and important chapter is distributed under nine heads, namely, (*A*) Courts by which decrees may be executed, (*B*) application for execution, (*C*) staying execution, (*D*) questions for Court executing decree, (*E*) the mode of executing decrees, (*F*) attachment of property, (*G*) sale and delivery of property, (*H*) resistance to execution, and (*I*) arrest and imprisonment.

(*A*) Courts by which decrees may be executed. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution; and the Code (secs. 223–228) prescribes a procedure, deriving originally from Act XXXIII of 1852, when a Court desires that its own decree shall be executed by another Court. Application for execution.

(*B*) Application for execution. The Court does not execute its decree unless and until the successful party applies to it for execution. Under the Code of 1859 a decree was treated by many creditors as a rather eligible mode of investing their money. The interest was good and the security very good. It was true that under the Limitation Act the creditor could not enforce his decree if three years had elapsed since some step taken to enforce it; but the only result of that provision was that some formal step was taken every three years, and, practically, the decree ran on unsatisfied and hanging over the debtor it might be for fifty years or more. The Code checks this practice by declaring (sec. 230) in substance that a decree shall not remain in force for more than twelve years, unless the creditor has been prevented from reaping its fruits by some fraud or force on the part of the judgment-debtor. Rules are then provided for the case of a holder of a decree desiring to enforce it, and for the special cases of applications, 1. by a joint decree-holder, 2. by the transferee of a decree, and, 3. when the judgment-debtor dies before execution.

(*C*) Staying execution. The Code (sec. 239) then enables the Court to which a decree has been sent for execution under Staying execution.

section 223 to stay upon sufficient cause execution for a reasonable time, and empowers it to require security from or impose conditions upon the judgment-debtor. These provisions correspond with the old proceeding in England by *audita querela*, whereby the judgment-debtor might prevent execution on the ground of some matter of defence which there was no opportunity of raising in the original action. See now Order xlii. r. 27.

Questions for Court executing decree.

(*D*) Questions for Court executing decree. The Code (sec. 244) then declares that certain questions relating to mesne profits, interest, execution, discharge, or satisfaction shall be determined by the Court executing the decree, and not by separate suit.

Mode of executing decrees.

(*E*) The mode of executing decrees. The Code then provides a procedure on receiving and admitting applications for the execution of decrees (sec. 245); and deals with the cases where there are cross-decrees between the same parties (sec. 246); and cross-claims under the same decree (sec. 247); where the decree is against the representative of the deceased for money; where the decree is executed against a surety (sec. 253); where the decree is for money (sec. 254); or for mesne profits (sec. 255); for a specific moveable (sec. 259); for specific performance or restitution of conjugal rights (sec. 260); for the execution of conveyances or endorsement of negotiable instruments (secs. 261, 262); for immoveable property (secs. 263, 264), *first*, where the property is not in the occupancy of raiyats or other persons entitled to occupy the same, and, *secondly*, where, as is usually the case in India, the property is in the occupancy of persons having a legal right of occupancy so long as they pay their rents according to established rates. Provision is, lastly, made for the partition of separate possession of a share of an undivided estate paying revenue to Government (sec. 265).

Attachment of property.

(*F*) Attachment of property. The Code then describes the kinds of property liable to attachment and sale in execution of a decree. It follows the Mesne Process Act in authorising the attachment and sale of property over which the judgment-debtor has a power which he may exercise for his own benefit. And it follows Act VI of 1855, sec. 1. cl. 1, in declaring that trust property may be taken in execution of a decree against the beneficiary[1]. It exempts from attachment twelve classes of articles,

[1] Before 1855 trust property could not be taken in execution of a judgment of the Supreme Court. 'There can hardly' (write the Commissioners, First Report, p. 65) 'be said to be any fixed practice on this subject in the Company's Courts. But we have reason to think that some Judges of the Company's Courts might hesitate to put a decree in execution against property which had been formally vested by regular deeds in trustees for the benefit of the defendant.'

such as the necessary wearing apparel of the judgment-debtor, his wife, and children; the salary of a public officer or railway servant, where it does not exceed rs. 20 a month, and is therefore absolutely necessary to enable him to live and perform his duties; the tools of artisans; implements of husbandry and cattle kept *bona fide* for agricultural purposes[1]; and the wages of labourers and domestic servants (sec. 266). Seamen's wages are exempted by the Merchant Shipping Act, 1854, 17 & 18 Vic. c. 104, sec. 233. 'The principle is that it is against public policy to make a man compulsorily idle either by taking away the tools which are necessary to enable him to earn his living, or by anticipating the wages of his daily labour and so destroying all motive for self-exertion.'

Discovery in aid of execution.

The Court is empowered to summon and examine the judgment-debtor and any other person as to any property liable to be seized in satisfaction of the decree (sec. 267). This corresponds with the English rule on discovery in aid of execution (Order xlii. r. 32).

Attachment of debts.

Special provisions are made for the attachment of debts, shares, and other moveable property not in the judgment-debtor's possession (sec. 268). 'Debts' here, like 'debts' in sec. 266, includes all pecuniary claims, whether accruing or actually owing, over which the Courts of British India have jurisdiction[2], with the following exceptions:—conditional debts, *Howell* v. *Metropolitan District Ry. Co.*, 19 Ch. D. 508; debts due to the judgment-debtor and another not a party to the judgment, *Macdonald* v. *Tacquah Gold Mining Company*, 53 L. J., Q. B. 376, and the claims exempted by the proviso to section 266, clauses (*e*), (*g*), (*h*), (*i*) and (*j*).

Thus the following debts have been held to be attachable: interest on railway stock guaranteed by one company to another, *Bouch* v. *Sevenoaks Railway*, 4 Ex. D. 133: and money in the hands of (1) the official liquidator of a company against which judgment has been obtained, *Ex p. Turner*, 2 D. F. & J. 354; (2) a re-

[1] There was a similar exemption of cattle in a Bombay Regulation (4 of 1827, sec. 62, cl. 2), suggested by the statute which gave the writ of elegit (13 Edw. I. c. 18), or, more likely, by Blackstone's account of that writ. Mr. Thorburn has recently proposed that grain and straw sufficient to keep the cultivator till the next following harvest should also be exempted. This would not be much, as in most Indian provinces there are two harvests in the year.

[2] 5 Bom. 249. But the mere circumstance that the garnishee is at the time of the application for attachment beyond the limits of British India does not exempt the debt from attachment, *ibid.*

ceiver appointed in an administration-suit, *Rapier* v. *Wright*, 14 Ch. D. 638; (3) a sheriff, the money being the proceeds of an execution levied by him, *Murray* v. *Simpson*, 8 Ir. C. L. Appx. xlv; and (4) a trustee, *Nash* v. *Pease*, 47 L. J., Q. B. 766.

Attachment of other moveable property.

Provision is also made for the attachment of other moveable property in the debtor's possession (sec. 269); of negotiable instruments (sec. 270); of property in dwelling-houses and zanánas (sec. 271); of property deposited in Court or with a public officer (sec. 272); of decrees (sec. 273); of immoveable property (sec. 274).

Attachment in execution of decrees of several Courts.

Property not in the custody of any Court is sometimes attached in execution of decrees of more Courts than one. In such cases the Code provides (sec. 285) that the Court to receive or realise such property shall be the Court of highest grade, or, where the Courts are of equal rank, the Court under whose decree the property was first attached.

General attachment.

The Code of 1859 (sec. 214) empowered the Courts to order a general attachment of the debtor's moveable property, wherever it might be found. This afforded facilities for oppression, and it was said by Mr. Cockerell in Council that 'an unscrupulous decree-holder armed with a warrant for the general attachment of his debtor's property, used it as a sort of roving commission to plunder his enemies by pouncing upon their property on the plea that, though in their possession, it actually belonged to his judgment-debtor[1].' The Code omits this provision. Section 267 seems to do all that is needed.

Sale and delivery of property.

(*G*) Of sale and delivery of property. This branch of the subject is subdivided into (*a*) general rules; (*b*) rules as to moveable property; (*c*) rules as to immoveable property.

Proclamation of sale.

Of the general rules the most important are those contained in sections 287, 291 and 294. Section 287 requires that the proclamation of sale shall specify, not only the property to be sold, but also the revenue and incumbrances (if any) to which it is liable, the amount for the recovery of which the sale is ordered, and every other thing material for the purchaser to know. For the purpose of ascertaining the matters to be so specified, the Court is empowered to summon and examine such persons as it thinks necessary.

Postponement of sale.

Section 291 enables the Court to adjourn the sale where an immediate sale is likely to cause undue injury to the judgment-debtor and the postponement will not seriously prejudice the decree-holder[2].

Decree-holder not

Section 294 declares that no holder of a decree in execution of

[1] Proceedings, 1876, p. 253.

[2] 20 Suth. 130.

which property is sold shall, without the express permission of the Court, bid for or purchase the property. to purchase.

The Code of 1859 provided (sec. 270) that the person who first attached property should be the first to be paid out of it even as against another creditor who had obtained a prior decree. This provision often led to unseemly scrambles for priority; and it was frequently matter of accident, or of favour from the ministerial officers of the Court, whether one of several decree-holders, all equally entitled, should be paid in full to the detriment of the others. The Select Committee therefore decided that there should be a rateable division among all the judgment-creditors up to the point when it becomes inconvenient to delay dealing with the assets; and section 295 accordingly declares that, whenever assets are realised in execution of a decree, and more persons than one have previously applied for execution of money-decrees against the judgment-debtor and have not been satisfied, the assets shall be divided rateably among them. But this general rule is qualified in cases where the property is subject to a mortgage or charge. And it is only a rule of procedure, not affecting the civil rights of the parties[1]. Rateable division of assets.

The rules as to moveable property deal specially with the sale and transfer of negotiable instruments and shares in public companies (secs. 296, 301, 302) and with the delivery of property to which the judgment-debtor is entitled subject to a lien (sec. 300). In the case of any property not specially provided for the Court may make a vesting order (sec. 303). Moveable property.

As to immoveable property, the Code provides that any Court other than a Court of Small Causes may order such property to be sold in execution (sec. 304). When the property is a share of undivided land, and two or more persons, one of whom is a co-sharer, respectively advance the same sum at any bidding, such bidding is deemed the bidding of the co-sharer (sec. 310). The object of this is not only to keep out strangers, but to prevent sales from being damped by the subsequent action of co-sharers. The decree-holder may apply to have a sale set aside on the ground of material irregularity. No order to set aside a sale is made unless both judgment-debtor and decree-holder have had an opportunity of being heard (sec. 313). The title to the property vests in the purchaser, not from the date of the attachment, but from that of the confirmation of the sale. The attachment may have been months or years before the purchase, and its effect is, not to deprive the judgment-debtor of the owner- Immoveable property.

[1] 22 Suth. 98: 4 Cal. 29.

ship of the property, but to place the property *in custodia legis*, and to prevent the defendant dealing with it to the plaintiff's prejudice. The purchaser is a stranger to the property till the date of his purchase, and there is no reason why he should be entitled to the rents and profits before that date.

Transfer to collector of decrees for sale of land.

The Code of 1859 contained no check upon the unreserved and unqualified sale of the land of the debtor who could not pay. There was indeed one section (248) which provided that in certain circumstances the execution of a decree might be handed over to a collector. Whether it was intended to give the collector any discretionary power in such cases may be doubted; but at all events, if this was intended, the intention was not clearly expressed, and the Courts had held that the collector was only a ministerial officer for carrying its decrees into effect. The result was that sales had gone on in a rigid mechanical way without even the check of an upset price, or of a power of adjourning the sale when there were few bidders, and with the common result that the property was bought in by the judgment-creditor himself at a great under-value[1]. The present Code therefore not only provides, as we have seen, for adjourning the sale and preventing the decree-holder from buying; it also empowers the Local Governments to declare that, in any local area, the execution of decrees for sale of immoveable property shall be transferred to the collector, and to prescribe rules for the transmission, execution and re-transmission of such decrees (sec. 320). When the execution of a decree has been so transferred, the collector may (*a*) postpone the sale so as to enable the judgment-debtor to raise the amount, or (*b*) raise the amount by letting or mortgaging the whole or part of the property, or (*c*) sell the property or so much thereof as may be necessary. Twelve sections (secs. 322–325 C) provide a procedure for the collector in exercise of this jurisdiction.

Resistance to execution.

(*H*) Of resistance to execution. The Code here deals with the cases where resistance to the execution of a decree for the possession of property is caused by the judgment-debtor, or at his instigation (secs. 329, 330); by a claimant in good faith other than the judgment-debtor (sec. 331); where the person dispossessed is not the judgment-debtor and disputes the right of the decree-holder to be put into possession (sec. 332); where the purchaser of any immoveable property sold in execution is resisted by the judgment-debtor or by some claimant in good faith (secs. 334, 335).

[1] Sir A. Hobhouse's speech, Proceedings, 1876, pp. 232, 233.

(*l*) Of arrest and imprisonment. The Code then provides for the arrest of judgment-debtors and their imprisonment in the civil gaol. The Code here prohibits the breaking open of outer doors of dwelling-houses for the purpose of making arrests, and makes due provision regarding the entry into zanánas. In the case of a decree for money when the debtor pays the amount of the decree and the costs of the arrest he is at once released. He is also released if he furnish sufficient security that he will appear when called upon and that he will within one month apply to be declared an insolvent (sec. 336). The State defrays the cost of maintaining criminal prisoners while in jail; but in civil cases, no judgment-debtor is arrested unless the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court. When he is committed to gaol, the Court fixes a monthly allowance for his subsistence to be supplied by the party on whose application the decree has been executed (sec. 339), and the judgment-debtor will be discharged on failure to pay the allowance (sec. 341, cl. *d*).

Arrest and imprisonment of judgment-debtors.

Subsistence-allowance.

Under the Code of 1859 a judgment-debtor might be imprisoned for two years if the debt exceeded rs. 500, six months if it exceeded rs. 50, and three months if it was rs. 50 or less. The Select Committee was strongly urged to abolish imprisonment altogether. Though it did not see its way to such a change, it greatly shortened those terms; and section 342 declares that no person shall be imprisoned in execution of a decree for more than six months, or if the decree be for payment of a sum not exceeding 50 rs., for more than six weeks. It is desirable that the Indian legislature should follow the example of almost every civilised country in the world[1], and get rid altogether of imprisonment for debt, which J. S. Mill called a barbarous expedient of a rude age, 'repugnant to justice as well as to humanity.' Moreover, in India, the power to imprison for debt sometimes leads to gross abuses. It was stated by the Dekkhan Raiyats Commission—and the statement when quoted in the Viceregal Council[2] was not contradicted—that 'the terror of being put into a prison, even for debt, was so extraordinary and so unreasonable among the Native population, that they were willing to make any sacrifices, even in some recorded instances to the extent of surrendering their wives and

Imprisonment for debt.

[1] Under the New York Civil Procedure Code, § 3221, a debtor may be imprisoned in one case only, viz. where his female servant recovers judgment for wages not amounting to more than fifty dollars, and his property is insufficient to satisfy the execution.

[2] Abstract of Proceedings, 1876, p. 271.

daughters to the creditor for immoral purposes, rather than be sent to jail; and further, that it led to absolute slavery, and also to the execution of fresh bonds upon any terms whatever.'

All persons attested for and belonging to Her Majesty's Indian Army are exempt from liability to be arrested for debt[1]; and a soldier of Her Majesty's European forces while serving as such is similarly exempt, unless the decree is for a sum exceeding £30 exclusive of costs[2].

Chapter XX. Of Insolvent Judgment-debtors.

The Code of 1859 contained the germ, but only the germ, of an insolvent law. It provided in sec. 271 that when a sale took place under a decree the proceeds should first be applied in paying the holder of that decree and then go rateably and without any priority among the other decree-holders. It then declared that an arrested debtor might apply for discharge on giving up all his property; that if the Court discharged him, his person was not to be arrested again under the same decree; and that the decree-holder was to be paid out of the proceeds of his property. But his person was not protected as against any debt other than that for which he had been arrested; his property was not protected at all; and the Court was not told what to do with his property after paying the decree-holder. These provisions were but little used, and indeed there was small inducement to the debtor to avail himself of them[3]. An insolvent law, if possible more imperfect, was provided for the Panjáb by Act IV of 1872, secs. 24-31.

Chapter XX of the Code of 1882 contains a simple but complete procedure in insolvency, adapted to the provincial Courts[4]. Any judgment-debtor arrested or imprisoned in execution of a decree for money (which includes a decree for damages), or against whose property an order of attachment has been made in execution of such a decree, may apply to the District Court for a declaration of insolvency. Any

[1] Act V of 1869, Part III, (b). The Governor General, the Governors of Madras and Bombay, the members of their respective councils, the Lieutenant Governor of Bengal and the Judges of the High Courts are exempt from arrest by order of the Presidency Small Cause Courts (Act XV of 1882, sec. 93). And the new Provincial Small Cause Courts Act, IX of 1887 (section 15 and sched. II, clauses 1 and 2), excepts from the cognisance of these Courts suits in which such orders could be made.

[2] 44 & 45 Vic. c. 58, s. 144.

[3] Sir A. Hobhouse's speech, 23rd February, 1875, Abstract of Proceedings.

[4] That it applies to debtors on the original side of the Presidency High Courts, see 11 Cal. 451: 8 Mad. 276. But the jurisdiction in insolvency under 11 & 12 Vic. c. 21 still exists in the Presidency Towns.

holder of such a decree may also apply that the judgment-debtor may be declared an insolvent. The application sets forth, amongst other things, the particulars of the debtor's property, the place in which it is to be found, his willingness to put it at the disposal of the Court, the particulars of all pecuniary claims against him, and the names and residences of his creditors. The Court fixes a day for hearing the application, and causes a copy to be served on the creditors, or, where the applicant is the decree-holder, on the judgment-debtor. On the day so fixed the Court examines the judgment-debtor as to his then circumstances and as to his future means of payment, and hears the creditors in opposition to his discharge. If the Court is satisfied that the statements in the application are substantially true, and that the debtor has not with intent to defraud his creditors concealed or transferred any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, that he has not recklessly contracted debts or given an unfair preference, and that he has not committed any other act of bad faith regarding the matter of the application, the Court may declare him to be an insolvent, and may either discharge him, or appoint a receiver of his property. The creditors then prove their debts: the Court frames a schedule of such persons and debts; and the declaration of insolvency is deemed to be a decree in favour of each creditor for his debt. But a partner in an insolvent firm is not entitled to prove in competition with its creditors. The order appointing a receiver vests in him all the insolvent's property, except necessary wearing apparel, and other things exempted from attachment and sale in execution of a decree.

Discharge of insolvent.

Duty of receiver.

The receiver then gives security and collects the assets, and on his certifying that the insolvent has placed him in possession thereof, the Court may discharge the insolvent on such conditions as it thinks fit (sec. 355). The receiver then proceeds to convert the property into money, and to pay thereout (1) debts etc. due by the insolvent to Government, (2) the decree-holder's costs, and (3) debts secured by mortgage of the insolvent's property. He then distributes the balance among the scheduled creditors rateably according to the amounts of their respective debts[1], and he retains as remuneration a commission to be fixed by the Court not exceeding five per cent. on the amount of the balance distributed. In the case of a large balance, a commission of three or even of two per cent. is sufficient. The receiver, lastly, delivers the surplus, if any, to the insolvent or his legal representative.

[1] As to calls due from insolvent contributories, see Act VI of 1882, secs. 125, 127, 144 (e).

An insolvent when discharged cannot be arrested or imprisoned on account of any of the scheduled debts; but his property, except what is vested in the receiver and except the particulars exempted from attachment and sale, is liable to attachment and sale, until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge (sec. 357). When the amount of the scheduled debts is only rs. 200 or less, the Court may declare the insolvent absolved from further liability. A similar declaration must be made after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge.

In the case of a dishonest applicant for a declaration the Court *must*, if any of his creditors so require, sentence the applicant to imprisonment for a term not exceeding a year, or it *may*, if it thinks fit, send him to the Magistrate to be dealt with according to law.

The foregoing provisions are intended only for natural persons. For the case of an insolvent company provision is made by Act VI of 1882.

PART II. OF INCIDENTAL PROCEEDINGS.

The Code here deals with the following subjects: the death, marriage and insolvency of parties (secs. 361–372): the withdrawal and adjustment of suits (secs. 373–375); payment into Court (secs. 376–379); requiring security for costs (secs. 380–382), and issuing commissions (secs. 383–396).

Death, marriage, and insolvency of parties.

The rules as to the procedure in suits when a party dies, marries, or becomes insolvent were originally taken, with some modifications, from the Common Law Procedure Act, 1854 (15 & 16 Vic. c. 76); and see Order xvii. r. 1. The Code does not here provide that suits shall not become defective by the assignment, creation or a devolution of any estate or title *pendente lite*. But see as to such assignments the Transfer of Property Act, sec. 52[1]: *Seear* v. *Lawson*[2], and *Kino* v. *Rudkin*[3].

Withdrawal and adjustment of suits.

The rules as to withdrawal of suits apply to suits at any stage, whether in the original or appellate Courts, and even to proceedings in execution[4]. They correspond with the English Order (xxvi) as to discontinuance. But though the Code allows the plaintiff to abandon part of his claim, it does not, as it ought, permit him to

[1] Vol. I. of this work, p. 766. [2] 16 Ch. D. 121.
[3] 6 Ch. D. 160, and see *Campbell* v. *Holyland*, 7 Ch. D. 166.
[4] 5 Mad. H. C. 298.

discontinue his suit against one or more of the defendants, while continuing his suit against the rest. The Code is also defective in not providing for giving to the defendant notice of the plaintiff's withdrawal or abandonment[1], so that the defendant may show cause why the requisite permission should not be granted. It should also provide here for striking-out, on the application of the defendant, the whole or any part of his alleged grounds of defence.

Payment into Court.

The provisions as to payment into Court apply to every suit for debt or damages. The payment amounts to an admission of the claim in respect of which it is made, and there is no power (as there is under the English Order xxii. r. 1) to pay money into Court with a defence denying liability. Provision is made in section 379 for the two cases (*a*) where the plaintiff accepts the deposit as satisfaction in part, and (*b*) where he accepts it as satisfaction in full.

Requiring security for costs.

The other incidental proceedings here dealt with are: requiring security for costs where the plaintiff resides out of or leaves British India and does not possess sufficient immoveable property in that country[2], and issuing commissions.

Commissions.

Commissions are of four kinds; to examine witnesses (secs. 383–391); to make local investigations (secs. 392–393); to examine accounts (secs. 394–395); and to make partition of immoveable property (sec. 396).

1. To examine witnesses.

Most of the provisions for commissions to examine absent witnesses were adapted by the framers of the Code of 1859 from Act VII of 1841. The present Code provides here for four classes of witnesses:

(1) persons resident within the jurisdiction of the Court who are exempted under section 640 or 641 from attending the Court, or who are from sickness or infirmity unable to attend it (sec. 383);

(2) persons resident beyond the jurisdiction;

(3) persons about to leave the jurisdiction before the date on which they are required to be examined in Court; and

(4) officers of Government who cannot attend the Court without detriment to the public service (sec. 386).

Commissions to examine the first class of witnesses may be issued to any proper person (sec. 385): commissions to examine the other classes must be issued either to a Court within whose jurisdiction the witnesses reside or to a pleader of a High Court (sec. 386). Unless under the circumstances mentioned in section 390, evidence taken under a commission cannot be read as evidence

[1] 6 All. 211.

[2] Where a suit is brought by collusion or instigation of a third party the Code gives no power to require the plaintiff to furnish security; see Fulton, 157, per Peel C.J.

in the suit without the consent of the party against whom it is offered. Section 400 requires the Court to direct the parties to appear before the Commissioner. This dispenses with the necessity of giving the other side notice of the issue of a commission.

The English statute 22 Vic. c. 20 provides for taking evidence in suits and proceedings pending before the chartered High Courts in places out of their jurisdiction.

2. For local investigations.

The sections as to commissions for local investigations were founded on three old regulations[1]. In suits relating to disputed boundaries, it is sometimes necessary that an actual inspection and investigation on the spot should be made, either by the judge himself or by a trustworthy commissioner in his stead. There has always been some difficulty in finding persons on whom sufficient reliance may be placed for making these investigations; and the commissioner employed is often accused by one of the parties, and sometimes with truth, of having been corrupted by the other. Cases of greater complexity occur where there is reason to fear that he may have been tampered with by both. Before the Code of 1859 was enacted this difficulty was aggravated by the fact that the commissioner, though appointed to take the examination of witnesses and to make plans of localities, could not himself be examined as a witness. The latter part of section 180 of Act VIII of 1859 (= sec. 393 of the present Code) removed this difficulty, by allowing the commissioner to be personally examined as a witness, though, to prevent him from being unduly harassed, the permission of the Court is made a condition precedent to his examination by a party. In the Bengal Presidency, ámíns, or Native commissioners employed under Act XII of 1856, are usually deputed to make investigations under these provisions.

3. To examine accounts.

The sections as to commissions to examine accounts are employed when a party desires to use in evidence something more than the particular entries referred to in section 62 of the Code; and they should be read in connexion with the Evidence Act, section 65, cl. (*g*).

4. To make partitions.

The sections as to partition relate only to property *not* paying revenue to Government. Partitions of immoveable property paying revenue are left to be dealt with by various local laws relating to this subject[2].

[1] Ben. Reg. 4 of 1793, sec. 17: Mad. Reg. 3 of 1802, sec. 18: Bom. Reg. 4 of 1827, sec. 31.

[2] See in Bombay, Bom. Act V of 1879, secs. 113, 114, 117; in the Lower Provinces, Ben. Act VIII of 1876; in the N. W. Provinces, Act XIX of 1873; in the Panjáb, Act XXXIII of 1871, sec. 65 (2); in Oudh, Act XVII of 1876; in the Central Provinces, Act XIX of 1863; in Ajmer, Reg. II of 1877.

PART III. OF SUITS IN PARTICULAR CASES.

This Part contains eight chapters relating to the following subjects: suits by paupers (secs. 401–415); suits by or against Government or public officers (secs. 416–429); suits by aliens and by or against foreign and native rulers (secs. 430–434); suits by or against corporations and companies (secs. 435, 436); suits by or against trustees, executors, and administrators (secs. 437–439); suits by or against minors and persons of unsound mind; (secs. 440–464); suits by or against military men (secs. 465–469); and, lastly, interpleader suits (secs. 470–476).

Suits by Paupers.

The right to sue *in forma pauperis* is founded on a statute of Henry VII, which provided that every poor person having cause of action should have, by discretion of the Chancellor, writs original and writs of subpœna free of charge. The Indian legislature dealt with the subject by Act IX of 1839[1]. In England the amount which excludes the operation of the rules as to paupers was formerly £5, but is now £25[2]. The Code of Civil Procedure defines a pauper as a person not possessed of sufficient means to enable him to pay the court-fee prescribed for the plaint, or not entitled to property worth rs. 100 other than necessary wearing apparel and the subject-matter of the suit[3]. A pauper cannot sue for loss of caste, libel, slander, abusive language or assault (sec. 402); but, subject to these restrictions, he may bring and prosecute all suits *ex delicto* as well as *ex contractu*[4]. His application for leave to sue as such will be rejected when it appears that he has entered into any champertous agreement (sec. 407). So he will be dispaupered if, after being allowed to sue as a pauper, he enters into a similar agreement (sec. 414). Where his application to sue as a pauper in respect of any right has been rejected on this or any other ground mentioned in section 407, he cannot sue in the ordinary way in respect of such right unless he first pays the costs incurred by Government in opposing his application (sec. 413).

In England, no one can sue as a pauper unless he has laid a case before counsel for his opinion whether or not he has reasonable

[1] There had been Regulations on the subject: Ben. Reg. 28 of 1814: Mad. Reg. VII of 1818, &c.: Bom. Reg. VI of 1827.

[2] Order xxvi. r. 22.

[3] In Bengal, Civil Court Ámíns may be employed to ascertain the means of persons suing *in forma pauperis*, Act XII of 1856, sec. 5, cl. 5.

[4] Fulton, 386, where the defendant was allowed to defend *in forma pauperis* an action of trespass for an assault.

grounds for proceeding and (one must suppose) obtained an opinion in his favour. When he is admitted to sue or defend as a pauper the Court may assign a counsel or solicitor, or both, to assist him; and any one taking or seeking any remuneration for conducting his case is guilty of a contempt (Order xvi. rr. 23, 26, 27). The Code provides (secs. 406, 407) for examining the pauper or his agent, and for rejecting his application if his allegations do not show a right to sue. But there is nothing in the Code corresponding with the second and third of the English rules.

A pauper plaintiff may, apparently, be required under section 380 to give security for costs[1]. As to the discretion of the judges of the Presidency Small Cause Courts to remit the costs of paupers, see Act XV of 1882, sec. 74.

Suits by or against Government.

The Courts of Small Causes have no jurisdiction in suits concerning any act ordered or done by the Governor General in Council or the Local Government[2]. But save as aforesaid, suits against the Government or public officers may be instituted in any Court however inferior. Two months' previous notice must be given (sec. 424), and no warrant of arrest can be issued without the consent of the District Judge (sec. 425).

Suits by Aliens.

The Code then lays down rules as to when private aliens and foreign States may sue in the Courts of British India (sec. 430).

Aliens. Alien friends may always sue[3]: alien enemies only when they reside in British India with the permission of the Government.

Foreign States. A foreign State may sue provided it has been recognised by Her Majesty or the Government of India, and the object of the suit is to enforce the private, as distinguished from the political[4] or territorial, rights of the head or of the subjects of that State (sec. 431). If a foreign chief become a suitor in our territories he may fairly be subjected to the incidents of the position he has chosen to assume. But in order to protect the dignity of such personages and to avoid awkward complications, the Code bars suits *against* sovran princes, ruling chiefs, ambassadors and envoys, except with the consent of Government, exempts their persons from arrest, and declares that

[1] See *Burke* v. *Lidwell*, 1 Jo. & Lat. 703.

[2] See Act XV of 1882, sec. 19, Act IX of 1887, sec. 15, and Sched. II.

[3] See the Naturalization Act, XXX of 1852, sec. 8.

[4] That infringing a prerogative right of a foreign state does not constitute a cause of action, see *Emperor of Austria* v. *Day*, 3 D. F. & J. 217, per Turner L.J.

no decree shall be executed against their property unless with a like consent (sec. 433). The Code also provides (sec. 434) for the execution in British India of the decrees of the Courts of such Native States as the Governor General in Council declares worthy of this privilege.

Suits by and against Corporations and Companies.

The chapter on suits by and against corporations and companies authorised to sue and be sued in the name of a trustee provides for the subscription and verification of the plaint (sec. 435), and for service of the summons on a corporation or company (sec. 436). Explanation II to section 17 declares where, for the purpose of determining the forum, a corporation or company shall be deemed to carry on business. The Court may require the personal appearance of any principal officer of the corporation or company, able to answer material questions relating to the suit. Section 124 provides for delivering interrogatories to any member or officer of a litigant corporation.

As to the remedies against a corporation which neglects a statutory duty, see 3 Mad. 209, 210. Injunctions against a corporation are binding on its members and officers (sec. 495). In England any judgment or order against a corporation which it wilfully disobeys may, by leave of the Court, be enforced by writ of sequestration against the corporate property, or by attachment against the directors or other officers, or by writ of sequestration against their property (Order xlii. r. 31).

Special provisions as to suits by and against literary, scientific, and charitable societies registered under Act XXI of 1860 are contained in that Act, sections 6, 7, 8.

Suits by and against Trustees and Executors.

In the chapter relating to suits by and against trustees, executors and administrators, the Code, first, provides that in suits concerning trust-property, the trustee shall represent the beneficiaries, and that, unless the Court otherwise directs, they need not be made parties (sec. 437). This is equivalent to 15 & 16 Vic. c. 86, s. 42, and Order xvi. r. 8. The Court will order the beneficiaries to be made parties when the trustees etc. are wholly uninterested in the matter[1], or have an adverse interest therein[2]. The Code then directs that, when there are several executors or administrators,

[1] *Clegg* v. *Rowland*, L. R., 3 Eq. 373.
[2] *Payne* v. *Parker*, L. R., 1 Chan. App. 327.

they must all be made parties to a suit against one or more of them (sec. 438), except in the case of executors who have not proved and administrators who are outside the jurisdiction. It, lastly, declares that, unless the Court otherwise directs, the husband of a married administratrix or executrix shall not be a party to a suit by or against her (sec. 439).

Suits by and against Minors and Lunatics.

The chapter on suits by and against minors and persons of unsound mind is substantially taken from the rules of the High Court at Fort William, dated 10th June, 1874. But the Code allows married women to act as next friends (sec. 445), and the Court is in every case, on being satisfied of a defendant's minority, to appoint a guardian *ad litem* (sec. 443); and no order to change a minor's pleader is required. Nothing in the greater part of this chapter applies to minors or persons of unsound mind for whose person or property a guardian or manager has been appointed by a Court of Wards or by the Civil Court under any local law.

As to redemption suits on behalf of minor mortgagors, see Act IV of 1882, sec. 91, cl. (*d*): as to suits by minors in the Matrimonial Court, Act IV of 1869, sec. 49 : as to suits in Presidency Courts of Small Causes by a minor for wages, piece-work or work as a servant, Act XV of 1882, sec. 32.

Suits by and against Military Men.

The chapter (XX) on suits by and against military men provides that where a party to a suit is an officer or soldier, is actually serving as such, and cannot obtain leave of absence, he may authorise any one to sue or defend in his stead. The necessary power of attorney is exempted from the court-fee. The Code then contains provisions as to the signature etc. of this authority, and as to the powers of persons so authorised, and as to service of process upon them or upon defendant officers and soldiers (secs. 467, 468). The chapter ends with a section providing for execution of process within the limits of a cantonment or garrison.

Interpleader.

The chapter on interpleader (XXXIII) is substituted for Act VIII of 1841 (= 1 & 2 Wm. IV. c. 58), which was accordingly repealed by Act X of 1877. It shows when an interpleader suit may be instituted (sec. 470); what the plaint must state (sec. 471); when the thing claimed must be paid into Court (sec. 472); the procedure at the first hearing (sec. 473); when agents and tenants

can compel their principals or landlords to interplead (sec. 474); how the plaintiff's costs may be secured (sec. 475); and, lastly, the procedure where the defendant in an interpleader-suit is actually suing the stakeholder in another suit (sec. 476). This last provision is somewhat at variance with Lord Cottenham's doctrine that the plaintiff must not be under any liabilities to either of the defendants beyond those which arise from the title to the property in contest[1].

Under the English Interpleader Acts the common-law Courts could only compel interpleader where one of the claimants had actually commenced an action against the stakeholder. The Code follows the practice in this respect of the equity Courts.

On the other hand, the Code differs from the old equity practice, and follows that of the common-law Courts, in allowing a bailee[2] to cause his bailor to interplead with a third party claiming the subject-matter by an adverse independent title. Section 474, however, prohibits an agent and a tenant from compelling his principal and landlord to interplead with any person claiming otherwise than through the principal and landlord.

The English Courts have ruled that the Crown cannot be made to interplead (*Candy* v. *Maugham*, 1 D. & L. 745), and the Indian Courts would probably follow this ruling. But it would not apply to the Secretary of State for India in Council, who stands in the place of the East India Company.

30 & 31 Vic. c. 142, s. 31 provides in England for an interpleader where claims are made in respect of goods taken in execution or the proceeds thereof. There is no such provision in India.

Part IV. Provisional Remedies.

We now come to the provisional remedies which may be required to prevent the defendant absconding, and property disappearing or being wasted pending litigation. The Code here deals with the following subjects: arrest before judgment; attachment before judgment; compensation for improper arrests or attachments; temporary injunctions; interlocutory orders; and, lastly, the appointment of receivers.

Arrest and Attachment before Judgment.

Arrest before judgment.

The sections (477–482) as to arrest before judgment correspond with the English Order lxix, and supersede the writ of *ne exeat regno*. They apply to every suit—in tort as well as in contract—

[1] See *Crawshay* v. *Thornton*, 2 My. & Cr. 1, 19.

[2] e.g. a wharfinger.

except suits for the possession of immoveable property, and they enable the Court, on the application of the plaintiff, to arrest the defendant and compel him to give security for appearing to answer any decree that may be passed against him. A similar power is given by the Companies Act (VI of 1882, sec. 164) when a contributory is about to abscond or to remove or conceal property.

Attachment before judgment.

Sections 483-490 enable the Court on the application of the plaintiff to require the defendant to give security to satisfy the decree, and, in default, to have his property attached. Provision is made (sec. 491) for compensating the defendant for an improper arrest or attachment.

Injunctions and Interlocutory Orders.

The sections on injunctions (492–497) deal only with temporary, or, as they are sometimes called, provisional injunctions. The subject of perpetual injunctions is treated in the Specific Relief Act, secs. 32–57[1]. A temporary injunction may be granted in three cases: (1) where any property in litigation is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; (2) where the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors; and (3) where the plaintiff sues to restrain the defendant from committing a breach of contract or other injury (secs. 492, 493). The imprisonment by which injunctions under this chapter are enforced cannot exceed six months (sec. 493). In all cases except those of great urgency, the Court must before granting an injunction cause the application for it to be notified to the opposite party (sec. 494). Where an injunction has been issued on insufficient grounds, compensation not exceeding rs. 1000 may be given to the defendant (sec. 497).

Temporary injunction.

Interlocutory orders.

An interlocutory order may be made to sell perishable articles, and for the detention, preservation or inspection of any property the subject of a suit. For these purposes the Court may permit the entry on or into any land or building in possession of any party to the suit, the taking of samples, and the trial of experiments. The sections (498–500) on this subject correspond with the English Order xxxii. rules 2, 3 and 4.

Receivers.

Chapter XXXVI provides for the appointment of a receiver whenever the Court thinks it necessary for the realisation, preservation,

[1] See Vol. I. of this work, pp. 937, 983-990.

or better custody or management of any property in litigagation or under attachment[1]. The Court commits the property to the receiver's custody or management if necessary, and removes the person in possession of such property. But it would seem that the receiver has title even before the security is perfected[2]. The receiver gives such security as the Court thinks fit, passes his accounts, pays the balance due from him, and is responsible for any loss occasioned to the property by his wilful default or gross negligence. In exercising these powers where the applicant is a creditor, the Court should have regard to the amount of the debt claimed by him, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment (Order l. r. 15 A). The jurisdiction under this chapter requires much judgment in its exercise, and is therefore confined to High Courts and District Courts. The lower Courts, moreover, have not a sufficient field open to them for selecting proper receivers.

The appointment of a receiver may be made at the instance of any party, and the defendant, for example, need not bring a cross-suit[3].

PART V. OF SPECIAL PROCEEDINGS.

The Code then deals with four kinds of special proceedings not of the nature of regular suits. These proceedings are: reference to arbitration; proceedings on agreement of parties; summary procedure on negotiable instruments; and suits relating to public charities.

Reference to arbitration.

The provisions of the Code as to reference to arbitration (secs. 506–526) are ultimately founded on the Common Law Procedure Act, 1854, secs. 3–10, which, however, deals with compulsory references. The Code here provides for the case in which the parties to a suit desire that any matter in difference between them *in the suit* be referred for arbitration. They apply in writing for an order of reference. They nominate the arbitrator, or if they cannot agree with respect to the nomination, or the person named refuses to act, the Court nominates (sec. 507). The Court makes an order

[1] As to the appointment of a receiver by a mortgagee, see Act XXVIII of 1866, sec. 6 (supra, Vol. I. p. 817). That a receiver cannot be appointed for property in the hands of an official liquidator, see the Companies Act, VI of 1882, sec. 141.

[2] See in England, *Edwards* v. *Edwards*, 2 Ch. D. 291: *Ex p. Evans*, 13 Ch. D. 252.

[3] See in England, *Sargant* v. *Read*, 1 Ch. D. 600.

of reference, specifying a time for delivering the award, and, when there are two or more arbitrators, providing, by appointment of an umpire or otherwise, for difference of opinion among them (sec. 509). The Court issues the same process to the parties and witnesses whom the arbitrators desire to examine as it may issue in suits tried before it (sec. 513.) The arbitrators may state a special case (sec. 517.) The Court may correct the award in certain cases (sec. 518). It may also remit awards for reconsideration (sec. 520), and an award remitted becomes void if the arbitrators refuse to reconsider it. But no award can be set aside except where the arbitrator or either party has been guilty of certain misconduct, or the award has been made after the Court has superseded the arbitration (sec. 522). If the Court sees no cause to remit the award and there is no application to set it aside, the Court gives judgment accordingly, and thereupon follows a decree, from which no appeal lies except in so far as it is in excess of, or not in accordance with, the award (sec. 522). The object of this is to give finality to proceedings in arbitration [1].

Filing agreements to refer.

The Code also provides for filing in Court agreements to refer to arbitration (secs. 523, 524) and awards made in matters referred to arbitration without the intervention of a Court (sec. 524). Compare the English rules as to making a voluntary submission to arbitration a rule of one of the superior Courts, 3 & 4 Wm. IV. c. 42, s. 29, and 17 & 18 Vic. c. 125, s. 17.

The Indian Courts have power to make orders of reference also in suits relating to religious endowments [2] and in suits against Dekkhan agriculturists [3].

Proceedings on agreement of parties.

Persons claiming to be interested in the decision of any question of fact or of law may enter into an agreement in writing stating the question in the form of a case for opinion, and providing that upon the finding of the Court thereon, certain money shall be paid or property delivered by one of them to the other, or that one or more of them shall do or refrain from doing some other specified act (sec. 527). The agreement is filed as a suit in the Court of the lowest grade having jurisdiction in the matter to which it relates; and the case is heard and disposed of as a suit (secs. 529–531).

These provisions correspond with the English rules as to stating questions of law in the form of a special case (Order xxxiv. rr. 1-8). But the Code provides for stating questions of fact as well

[1] 4 All. 286, per Straight J. [2] Act XX of 1863, sec. 16.
[3] Act XVII of 1879, sec. 15.

as of law. On the other hand, the Code does not enable a Judge to raise a question of law by special case or otherwise without consent, and there is no provision (such as is contained in the English rule 4) as to special cases in matters to which a married woman, minor, or person of unsound mind is a party.

Summary procedure on negotiable instruments.

Chapter XXXIX provides a summary procedure on negotiable instruments unless the defendant shows a defence on the merits within a specified time. It applied in the first instance only to the High Courts and Courts of Small Causes in the three Presidency-towns, and to the Courts of the Recorder of Rangoon and the Judge of Karáchi. But it may be extended by the Local Government to any other Court having ordinary original civil jurisdiction, and it has been so extended in the Madras Presidency, to all the District Munsifs' Courts, and in Burma, to the Courts of the Judge of Maulmain, and the Deputy Commissioner of Akyab. It corresponds with 18 & 19 Vic. c. 67, which Sir Henry Maine had introduced into India as Act V of 1866. In accordance with a decision of Bramwell B. on the English statute, the Code here declares that the defendant need not pay into court the sum mentioned in the summons unless his defence is not *prima facie* sustainable, or there is reasonable doubt as to its good faith.

Suits under this chapter must be brought within six months from the time the instrument sued on becomes due and payable[1].

The principle embodied in 18 & 19 Vic. c. 67 has recently been extended[2] in England to actions for the recovery of land by landlords against tenants holding over or persons claiming under such tenants; and it seems worthy of consideration whether there should not be a similar extension in India, so far as regards the houses, gardens, mines and quarries to which the Transfer of Property Act, chap. v, applies.

Public charities.

Chapter XL deals with suits relating to trusts created for public charitable or religious purposes. The Supreme Courts in the Presidency-towns had an equitable jurisdiction over charities, and under 53 Geo. III, c. 155, s. 111, the Advocate General had the right to appear and represent the Crown in informations for the administration of charitable funds[3]. This jurisdiction the present High Courts inherited. But the provincial Courts had no such jurisdiction. The Code here provides that in case of breach of trust for a public charitable or

[1] See the Limitation Act, infra, Sched. II, art. 5.

[2] See Order xiv. r. 1.

[3] See 4 Moore, I. A. 190.

religious purpose, or whenever the direction of the Court is deemed necessary for the administration of such a trust, the Advocate General or two or more persons directly interested in the trust may sue, either in the High Court or the District Court, for a decree appointing new trustees and otherwise dealing with the administration of the trust.

To a suit under this chapter by private beneficiaries the Code requires the consent of the Advocate General or (outside the Presidency-towns) the Collector, or such officer as the Local Government appoints in this behalf.

PART VI. OF APPEALS.

The first five Parts of the Code deal, as we have seen, with suits and other proceedings in a Court of first instance. But the unsuccessful party may be (and in India, as a rule, is) dissatisfied with the decision of that Court. In such case he generally has the right to appeal to a superior tribunal. If, then, he exercises that right, and either party is dissatisfied with the decision of the appellate Court, he may, as a rule, have a second appeal to the High Court. Lastly, from the decision of the High Court on this second appeal there may, in certain cases, be an appeal to the Queen in Council.

Part VI accordingly contains five chapters dealing with the following classes of appeals: appeals from original decrees (secs. 540–583); appeals from appellate decrees, otherwise called second appeals (secs. 584–587); appeals from orders (secs. 588–591); pauper appeals (secs. 592, 593); and, lastly, appeals to the Queen in Council (secs. 594–616).

Appeals from Original Decrees.

The Code here begins by declaring that appeals shall lie from all decrees (as defined in sec. 2) of the Courts of first instance, unless when such appeals are expressly barred by the Code itself[1] or some other law, such, for example, as the Limitation Act[2], and the Acts relating respectively to Courts of Small Causes[3], to summary suits for possession of immoveable property[4], to the trial of claims for waste lands[5]. The procedure on appeal is of extreme

[1] See secs. 283, 332, 629.

[2] Act XV of 1877, sec. 4, and Sched. II, Nos. 151, 152, 153, 156.

[3] Act XV of 1882, secs. 37, 39: Act IX of 1887, sec. 27.

[4] Act I of 1871, sec. 9; see Vol. I. of this work, pp. 948–949.

[5] Act XXIII of 1863, sec. 14. See also the bars in Act XXI of 1866 (Native Converts' Marriages), sec. 29: Act XV of 1872 (Christian Marriages), sec. 46; and the following local enactments: Act XVII of 1879 (Dekkhan Agriculturists), sec. 33: Bengal Act VII of 1876, sec. 62: Mad. Reg. XIV of 1816, sec. 5.

simplicity. The appellant presents a memorandum, accompanied by a copy of the decree appealed against. The Code lays down rules as to the form and contents of this memorandum (sec. 541), and forbids the appellant to urge, without the leave of the Court, any ground of objection not set forth therein (sec. 542). To stop the practice of presenting appeals merely for the purpose of delaying execution, the Code declares (sec. 545) that execution of a decree is not stayed by reason only of its having been appealed; but the appellate Court may stay execution when substantial loss may otherwise result to the appellant, and he applies without unreasonable delay and gives security for performing such decree as may ultimately be binding on him. Sections 548–570 prescribe the procedure after the appellant's memorandum is admitted. The Code is so framed as to enable the parties to conduct their own business at the expense of as little personal inconvenience as possible. It is necessary, therefore, that they should have due warning when the Court is able to proceed with the hearing of the cause. To afford them reasonable time for preparation and for instructing their professional agents if they choose to employ any, a day is fixed for hearing the appeal, so as to allow the respondent sufficient time to appear and answer (sec. 552), and notice of the day so fixed must be published and served on him (sec. 553). If a party neglects to appear on the day so fixed, the consequence is judgment by default in the case of the appellant, and proceeding *ex parte* in the case of the respondent (sec. 556). This is as near an approach to the practice in original suits as the different nature of an appeal admits of. Sections 571–578 contain rules as to the judgment in appeal. In order that the litigants may understand the grounds of the decision, and exercise, if they see fit, the right of second appeal[1], section 574 requires the judgment to state the points for determination, the decision thereupon, the reasons for the decision, and, when the decree appealed against is reversed, the relief to which the appellant is entitled. This last provision was suggested by Sir B. Peacock's ruling in *Bell* v. *Gurudas Roy*, 1 Ben. A. C. 50.

Judgment in appeal.

When the appeal is heard by two judges who differ in opinion on a point of law, the appeal may be referred to one or more of the other judges of the same Court, and is decided according to the majority (if any) of all the judges who have heard the appeal, including those who first heard it. Where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree is affirmed (sec. 575). No decree

Difference of opinion.

[1] 10 Cal. 935, per Field J.

can be reversed or substantially varied in appeal, on account of any error, defect or irregularity not affecting the merits of the case *or the jurisdiction of the Court* (sec. 578). This provision, which resembles that in the Code of Criminal Procedure, section 537, has lately been modified by sec. 11 of the Suits Valuation Act, VII of 1887[1].

Decree in appeal.

The decree in appeal is then dealt with (secs. 579–583). A decree of affirmance should contain, in addition to the particulars mentioned in section 579, so much of the decree below as it is intended to supersede, and thus avoid the necessity of a reference to the superseded decree[2].

Second Appeals.

Grounds of second appeal.

The Code then treats of second appeals[3], i. e. appeals to the High Court from appellate decrees by subordinate Courts. Such appeals lie on the following grounds and no others (secs. 584, 585):—

(*a*) the decision being contrary to some specified law—i. e. legislative enactment—or usage having the force of law—i. e. the common or customary law of the country or community[4]:

(*b*) the decision having failed to determine some material issue of law or usage having the force of law:

(*c*) a substantial error or defect in the prescribed procedure, which may possibly have produced error or defect in the decision of the case on its merits.

In order to cause finality in petty litigation relating to moveable property, the Code then provides that no second appeal lies in any suit of the nature cognisable in Courts of Small Causes (as to which see Act IX of 1887, sec. 15), when the amount or value of the subject-matter of the original suit does not exceed rs. 500 (sec. 586).

Appeals from Orders.

Appeals from orders.

The next chapter (XLIII) enumerates the orders under the Code from which alone appeals lie. All orders based on such appeals are final. An appeal is allowed (sec. 588, cl. 29) from any order inflicting a penalty on account of a contempt committed in the face of the Court, even though the person affected by the order is not a party to the suit.

Pauper Appeals.

Pauper appeals.

Pauper appeals are dealt with by Chapter XLIV. Applications for permission to appeal as a pauper will be rejected unless the Court on perusing the judgment and the decree appealed against sees reason to think the latter 'contrary to law or to some usage having the force of law[4],' or is otherwise erroneous or unjust.

[1] See infra, next after the Court Fees Act.

[2] 14 Moo. I. A. 492.

[3] The old misleading terms 'regular appeals' and 'special appeals' are discarded.

[4] 7 All. 653, per Petheram C.J.

Appeals to the Queen in Council.

Appeals to the Queen in Council.

The next chapter (XLV) deals with appeals to the Queen in Council, that is to say, the Judicial Committee of the Privy Council, to whom, in causes of a certain amount, there is an appeal in the last resort from the sentences of the Courts of British India, and of all the other dependencies and colonies of the realm[1].

This chapter reproduces the provisions of Act VI of 1874, which had been, as a Bill, submitted to, and approved by, the Judicial Committee, and which was repealed and re-enacted by the Code of 1877. It declares that an appeal lies to the Queen in Council—

(*a*) from any final decree passed on appeal by any Court of final appellate jurisdiction;

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction; and

(*c*) from any other decree where the case is certified to be a fit one for appeal (sec. 596).

But this declaration is subject to any rules that may from time to time be made by the Judicial Committee, and also to the following provisions:—

1. In each of the cases mentioned in clauses (*a*) and (*b*) the amount or value of the subject-matter of the suit in the Court of first instance, and the amount or value of the matter in dispute on appeal to the Queen in Council, must be at least rs. 10,000, or the decree must involve, directly or indirectly, some claim or question to or respecting property of like amount or value[2].

2. Where the decree affirms the decision of the Court immediately below the Court which passed it, the appeal must involve some substantial question of law.

3. No appeal lies to the Queen in Council (1) from the judgment of a chartered High Court where an appeal from such judgment can be preferred to a Division Bench, (2) from a decree in a suit of the nature cognisable in Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed rs. 500.

The rest of the chapter contains rules as to the application for certificate as to value or fitness; the security and deposit required

[1] See 3 & 4 Wm. IV. c. 41. The statutory provisions relating specially to Indian appeals are 13 Geo. III. c. 63, sec. 18: 37 Geo. III. c. 142, sec. 16; 3 & 4 Wm. IV. c. 41, secs. 23, 24; 8 & 9 Vic. c. 30; and 24 & 25 Vic. c. 104, secs. 8 and 11. As to appeals from Indian Vice-Admiralty Courts, see 30 & 31 Vic. c. 45, sec. 18.

[2] Before Act VI of 1874 was passed it was doubtful whether a person having an appealable claim for less than rs. 10,000 might not add the costs of suit so as to bring it within the amount, and so get the appeal as of right.

on granting such certificate; the procedure on admitting the appeal; the powers, pending the appeal, of the Court whose decree is appealed from (sec. 608), and the procedure to enforce the orders of the Judicial Committee (sec. 610). Of these rules, the most important are contained in sec. 608, under which the stay of execution pending an appeal is the exception and not the rule. The object of this is to stop appeals presented merely for the purpose of delaying execution.

Appeals in *forma pauperis.*

The Code expressly excludes from this chapter matters of criminal, admiralty or vice-admiralty jurisdiction, and appeals from orders of prize-courts[1]. It is silent as to appeals to the Judicial Committee *in forma pauperis.* It seems that, though the Courts in India admit such appeals, the appellant should make a special application to Her Majesty in Council for leave to prosecute his appeal as a pauper[2].

The period of limitation prescribed for the admission of an appeal to Her Majesty in Council is six months from the date of the decree appealed against; and every application to enforce an order of Her Majesty in Council must be made within twelve years from the time when a present right to enforce it accrues to some person capable of releasing the right.

Principles on which Judicial Committee acts.

We may conclude this subject by stating some of the principles on which the Judicial Committee has on various occasions declared that it deals with Indian appeals:—

(*a*) Where a compromise has been sanctioned, it is 'extremely reluctant to interfere with the discretion of the Courts in India,' when two Courts there have arrived at the same conclusion, unless it can be shown that those Courts have acted upon an erroneous principle (13 Moore, I. A. 34).

(*b*) Upon a boundary question, it is 'extremely reluctant to reverse the judgment of an Indian Court' unless the Committee is clearly satisfied that such judgment was wrong (13 Moore, I. A. 68; but see ibid., 181).

(*c*) The Committee will 'never disturb the concurrent decision of both Courts below upon a question of fact, unless it very clearly appears that there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous' (13 Moore, I. A. 82). But this rule does not apply where those Courts have never dealt with the real question raised by the issues and have drawn wrong inferences from the evidence (13 Moore, I. A. 232, 244: and see 12 ibid. 145).

[1] That there is no appeal from the decision of the Lords of the Treasury as to Indian prize-money, see *Case of the Army of the Deccan*, 2 Knapp. 103.

[2] See 4 Moore, I. A. 114, 136, and Macpherson, *Practice*, p. 246.

(*d*) Where an award has been made on an agreement to submit to arbitration a boundary dispute, their lordships 'look to the broad principles of justice and equity,' and, whilst they are always willing to pay due deference to the Regulations, they discourage 'mere technical objections which affect not the merits of the case' and the invention of new grounds of dispute which have occurred in the course of the litigation (7 Moore, I. A. 474–5).

(*e*) The judgment of a Judge of the High Court on the original side is equivalent at least to 'the verdict of a jury, to which the Judge who tries the case makes no objection' (6 Moore, I. A. 50).

(*f*) Their lordships will not entertain a purely technical objection to a party's right of action which was not taken in the Court below (5 Moore, I. A. 1, 26, per Lord Brougham: 3 Moore, I. A. 229: and see L. R., 4 App. Ca. 413, that they will not entertain any grounds of appeal not so taken).

(*g*) Where some evidence has been wrongly admitted, their lordships, who are judges of the fact, will consider 'whether throwing aside the evidence which ought not to have been admitted, there still remains sufficient evidence to support the decrees' (4 Ben. 499, and see 9 Ben. 371).

(*h*) No appeal against a decree merely as to costs would be allowed (1 Moore, I. A. 479).

To these we may probably add that where the sum involved is below the appealable amount, their lordships will give special leave to appeal, on the ground that the construction of an Indian Act affecting the interests of a large class of persons is involved. See *Brown* v. *McLaughan*, L. R., 3 P. C. 458, a case from South Australia, where the appeal was limited to the construction of the colonial statute.

Part VII. Reference and Revision.

This Part consists of a single chapter dealing with the reference of doubtful questions to, and the revision of non-appealable cases by, the High Court (secs. 617–622).

Reference of questions to High Court.

The questions which may be referred are questions of 'law or usage having the force of law[1],' and questions as to the construction of documents when such construction may affect the merits. The Court trying any suit or appeal in which the decree is final, i.e. which cannot come before the High Court on appeal, may, either of its own motion or on the application of any of the parties, draw up a statement of the facts and the question, and refer such statement, with its own opinion on the point, for the decision of the High Court. It may then pass a decree contingent upon such

[1] See above, p. 434.

decision. The High Court hears the parties, decides the point, and sends a copy of its decision to the referring Court (sec. 619). The Registrar of a Small Cause Court may in like manner state cases for the opinion of the Judge (sec. 646).

Revision of cases by High Court.

The section (622) as to revision empowers the High Court to call for the records of non-appealable cases[1] where the lower Court appears (*a*) to have exercised a jurisdiction not vested in it by law, (*b*) to have failed to exercise such jurisdiction, or (*c*) to have acted in the execution of its jurisdiction illegally or with material irregularity. The High Court may then pass such order in the case as it thinks fit, reversing or modifying the decision of the subordinate court. This brief section, like its prototype, Act XXIII of 1861, sec. 35, has given rise to some doubt and litigation, and should be explained or illustrated so as to express more clearly the intentions of the legislature. The effect of lapse of time[2] and of acquiescence[3] should be indicated, and in the first line, after 'may' the words 'either of its own motion or on the application of any of the parties' should be inserted.

PART VIII. REVIEW OF JUDGMENT.

Review of judgment.

Sometimes, after a decree has been made, new and important evidence is discovered, or some mistake, apparent on the face of the record, is found to have been made. In such case, where there is no appeal, the party aggrieved may apply for a review of judgment to the Court which passed the decree, whether that Court be a Court of first instance or a Court of appeal.

Part VIII consists of a single chapter dealing with this subject, the persons who may apply for a review, and the Judge to whom such applications may be made (secs. 623–629). If the application is granted, the Court rehears the whole case or such part of it as the Court thinks fit (sec. 630). By 'rehearing' is understood a re-arguing and reconsideration of the case, after receiving the additional evidence, the discovery of which was the ground of admitting the review[4]. A *new trial* can be had, in civil cases, only in the Presidency Courts of Small Causes: see Act XV of 1882, sec. 37.

Rehearing.

PART IX. THE CHARTERED HIGH COURTS.

This Part contains the special rules relating to the chartered High Courts, that is, the tribunals established in the Presidency-towns and at Allahabad under the 24th & 25th Vic. chap. 104.

These Courts take evidence and record judgments and orders according to their own rules (sec. 633). They may order their decrees

[1] This includes cases in Courts of Small Causes.

[2] See 6 Suth. Misc. Rulings, 96, col. 2: 15 Suth. Civ. R. 518, col. 2.

[3] 10 Suth. Civ. R. 6.

[4] Field, *Evidence*, 726.

made in exercise of their ordinary original civil jurisdiction to be executed before the costs are taxed (sec. 634). The portions of the Code specified in section 638, para. 1, do not apply to the High Court in the exercise of that jurisdiction; and section 579, as to the contents and signature of the decree, does not apply on the appellate side. Non-judicial and quasi-judicial acts may be done by the registrar (sec. 637).

Nothing in the Code extends or applies to any Judge of a High Court in the exercise of jurisdiction as an insolvent Court.

Part X. Miscellaneous.

The tenth and last Part of the Code deals with various miscellaneous matters which could not conveniently be treated in any of the foregoing divisions. It deals with the exemption from personal appearance (secs. 640, 641), and arrest under civil process (sec. 642); it provides a procedure in case of certain offences relating to public justice when committed in a civil Court (sec. 643); it requires the forms contained in the fourth schedule to be used for their respective purposes (sec. 644); it provides for the language of subordinate Courts (sec. 645); and sec. 648 provides a procedure for arresting a person or attaching property outside the local limits of the jurisdiction of the Court desiring the arrest or attachment. A copy of its warrant or order is sent to the proper District Court with the probable amount of the costs of the arrest or attachment, and the District Court then takes the necessary steps. A similar provision is contained in the Code of Criminal Procedure.

Schedules.

The Code concludes with four schedules. The first enumerates the enactments repealed; the second shows what chapters and sections of the Code extend to provincial Courts of Small Causes; the third saves certain provisions contained in six Bombay enactments; and the fourth contains 180 forms—plaints (*a*) for breach of contract; (*b*) for damages upon wrongs; (*c*) in suits for special relief, forms of summonses, registers of suits, memoranda, decrees, orders, notices, warrants, certificates, commissions, injunctions, bonds, etc., etc. Some of these were drawn by the writer: others were taken (with some changes) from the schedule to the County Court Orders in Equity (framed under 28 & 29 Vic. c. 99), and from the volume of forms published by the commissioners appointed to revise the New York Code of Civil Procedure; a few from Act VIII of 1859, and the rest were drawn by Mr. L. D. Broughton for the Court of the Recorder of Rangoon, and had stood the test of practice.

The Code received the assent of the Governor-General on the 17th March, 1882, and came into force on the 1st June in the same year. Since then it has on the whole worked satisfactorily; and, though a large number of cases appear in the Indian law reports to have been decided on its provisions, it will be found on examination that these cases rather illustrate its obvious meaning than expose its undeniable defects. Small portions of the Code have been repealed by Act XIV of 1885, Acts IV and X of 1886, and Act VIII of 1887: section 622 has been modified in its application to the Panjáb (Act XVIII of 1884); and the second schedule has been altered to adapt it to the new Provincial Small Cause Courts Act, IX of 1887. But during the last five years no amendments have been made. On a recent and careful perusal of the Code it seems to me to require the following alterations and additions, besides the amendments above suggested:—

Suggested amendments.

The expression 'cause of action' should be defined, and used throughout the Code in strict accordance with the definition.

The question as to whether suits can be brought on the judgments of Native Courts should be set at rest.

The Courts should be expressly empowered to stay frivolous or vexatious suits.

The words 'debts' and 'debt' in secs. 266 and 268 should be defined or explained.

In section 32, cl. 3, after 'consent' the words 'in writing' should be inserted.

Sections 53 and 111 should be amended so as to express unmistakeably the intention of the legislature.

The commencement of the proviso to section 74 should be made to harmonise with the wording of the English Order ix. r. 6.

In Chapter XXIX the mode of enforcing judgments and orders against corporations should be prescribed, and section 124 and the second Explanation to section 17 should be transferred to that chapter. Provision should be clearly made for service on a foreign corporation which has no place of business in British India.

Chapter XXXI should expressly provide for service on guardians *ad litem* of minors and on committees of lunatics.

Lastly, if the Government of India decide on abolishing imprisonment for debt and modifying the law relating to suits for restitution of conjugal rights, the Code will have to be changed in accordance with such decision.

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THE CODE OF CIVIL PROCEDURE, 1882.

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THE FIRST SCHEDULE.—Acts repealed.

THE SECOND SCHEDULE.—Chapters and sections of this Code extending to provincial Courts of Small Causes.

THE THIRD SCHEDULE.—Bombay enactments saved.

THE FOURTH SCHEDULE.—Forms of pleadings and decrees.

BENGAL SECRETARIAT LIBRARY.

ACT No. XIV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th March, 1882.)

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows :— Preamble.

PRELIMINARY.

1. This Act may be cited as 'The Code of Civil Procedure:' Short title.

and it shall come into force on the first day of June, 1882. Commencement.

This section and section 3 extend to the whole of British India[1]. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874[2]. Local extent.

[1] Act I of 1868, sec. 2, cl. 8, infra, vol. i. p. 488.

[2] The 'other sections' have since been extended to the following scheduled districts, viz. the Provinces of Sind and Coorg (*Gazette of India*, June 3, 1882, Part I, p. 217), the Districts of Darjíling, Jalpaigori, Hazáríbágh, Lohárdaga, Mánbhúm, the Pargana of Dhálbhúm in Singhbhúm, and the Mahál of Angúl (*ibid* p. 218), the Districts of Kámrup, Naugong, Darrung, Síbságar, Lakhimpur, Goálpára (excluding the Eastern Dváras), Silhat, and Káchár (excluding the North Káchár Hills) (*ibid.* p. 218), the Jhánsí Division (except secs. 15, 19, 23, 24, 25 and 652), Pargana Jaunsár Bawár and the scheduled portion of the Mirzapur District (*ibid.* p. 217), the scheduled Districts of the Panjáb (*ibid.* p. 219) and of the Central Provinces, except so much as authorises the sale of immoveable property in execution of a decree, not being a decree directing

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

'chapter:' 'chapter' means a chapter of this Code:

'district:' 'District Court:' 'district' means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local limits of the ordinary original civil jurisdiction of a High Court[1]: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

'pleader:' 'pleader' means every person entitled to appear and plead for another in Court[2], and includes an advocate[3], a vákíl[4], and an attorney[5] of a High Court:

'Government Pleader:' 'Government Pleader' includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code[6] on the Government Pleader[7]:

'Collector:' 'Collector' means every officer performing the duties of a Collector of land-revenue[8]:

'decree:' 'decree' means the formal expression of an adjudication

the sale of such property (*Gazette of India*, p. 217), Ajmer and Merwára (*ibid.* July 29, 1882, Part I, p. 289), and the Cantonment of Morar (*ibid.*). As to Upper Burma the Code is in force in the town of Mandalay only (Act XX of 1886, sched. II).

[1] See Act I of 1868, sec. 2, cl. 11, supra, vol. i. p. 488.

[2] See Act XVIII of 1879 amended by Act IX of 1884.

[3] As to the Presidency High Courts see the Letters Patent, 28th Dec. 1865, sec. 9: as to the High Court at Allahabad, L. P. 17th March, 1866, secs. 7, 8: as to other High Courts, Act IX of 1884, sec. 8.

[4] This means 'pleader:' it is the term used by the Letters Patent of the Presidency High Courts, hence its use here; 8 Bom. 145.

[5] As to attorneys of the chartered High Courts, see the Letters Patent above cited, and Act XVIII of 1879, sec. 5. As to the Courts in which they are entitled to practice, see Act XVIII of 1879, sec. 5; Act XVII of 1875, secs. 84, 87 (Burma); Reg. I of 1877, sec. 28 (*d*), (Ajmer). That judicial notice will be taken of the names of advocates, attorneys, vakíls and pleaders, see the Evidence Act, infra, sec. 57, cl. 12.

[6] See secs. 408, 414, 419, 420, 421, 426 and 427. Other functions are imposed on Government Pleaders by Ben. Regs. 19 of 1793, sec. 15; 37 of 1793, sec. 10; 3 of 1794, sec. 16; 33 of 1803, sec. 3; and Act XXXV of 1858, sec. 3; in Burma see Act XVII of 1875, secs. 84, 87; in the Dekkhan, Act XVII of 1879, sec. 69.

[7] See *British Burma Gazette*, June 1878, Part II, p. 175.

[8] e.g. a Deputy Commissioner.

upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit[1] or appeal[2]. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition[3]:

'order' means the formal expression of any decision of a Civil Court which is not a decree as above defined: 'order:'

'judgment' means the statement given by the Judge of the grounds of a decree or order: 'judgment:'

'Judge' means the presiding officer of a Court: 'Judge:'

'judgment-debtor' means any person against whom a decree or order has been made: 'judgment-debtor:'

'decree-holder' means any person in whose favour a decree[4] or any order capable of execution has been made, and includes any person to whom such decree or order is transferred: 'decree-holder:'

'written' includes printed and lithographed, and 'writing' includes print and lithograph[5]: 'written:'

'signed' includes marked, when the person making the 'signed:'

[1] 6 Bom. 54.

[2] 'decree' accordingly includes an order dismissing an appeal as barred by limitation, 7 All. 42: 9 Bom. 452: an order rejecting an application to sue as a pauper and striking the case off the Court's file, 9 All. 129: an order under sec. 381 dismissing a suit for failure by the plaintiff to furnish security for costs, 8 All. 108: an order under sec. 396 declaring the rights of the parties in a partition suit, but leaving their shares to be determined in executing the decree, 12 Cal. 273: an order rejecting an application under sec. 93 of the Bengal Tenancy Act, 1885, 14 Cal. 313.

[3] Nor is a decree that the defendant *B* is liable to pay half of whatever sum *C* might certify to be due, and reserving further consideration when the plaintiff *A* should produce *C*'s certificate, 9 Bom. 184, 195.

The following orders have been ruled not to be 'decrees':—*Award, or Agreement to refer*, directing or refusing filing of an, 2 All. 471; 5 All. 333; 6 All. 186. *Certificate* that case is fit for appeal to Queen in Council, granting or refusing, 1 Cal. 102; 7 Cal. 339. *Deciding* on settlement of issues that a hibbanáma relied on by a party is invalid, 4 Cal. 531. *Dismissing* suit where summons not served, 9 Cal. 163. *Inspection* of documents, 9 Bom. H. C. 398. *Restraint* of proceedings in former suit, refusing, 2 Hyde, 212. *Review* of judgment, dismissing, 4 Ben. A. C. J. 10. *Withdrawal* of suit, allowing, 6 All. 211.

[4] or a share in such decree, 5 Cal. 593.

[5] This definition was inserted with a view of encouraging printing in legal proceedings.

mark is unable to write his name; it also includes stamped with the name of the person referred to[1]:'

'foreign Court:' 'foreign Court' means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council[2]:

'foreign judgment:' 'foreign judgment' means the judgment[3] of a foreign Court:

'public officer:' 'public officer' means a person falling under any of the following descriptions (namely):—

every Judge;

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the

[1] i.e. in the subsequent sections of this Code as being required to sign or verify certain documents, 3 All. 575. He may use a stamp even though he can write his name (*ibid.*). The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank. Hence the last twelve words of this clause.

[2] The English Courts (other than the Judicial Committee of the Privy Council, which has 'authority in British India') are with regard to the Courts in India as much foreign courts as the courts of France or any other country, 8 Bom. 574, and see L. R., 1 I. A. 385.

[3] *Rectius* 'decree': see the definitions, p. 467.

pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty[1].

'Government.'

And in any part of British India in which this Code operates, 'Government' includes the Government of India[2] as well as the Local Government[3].

Enactments repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

References in previous Acts.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Saving of procedure in suits instituted before 1st June, 1882.

Save as provided by section 99 A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882[4], or any proceedings after decree that may have been commenced and were still pending at that date[5].

Appeals pending on 29th July, 1879.

Every appeal pending on the twenty-ninth day of July, 1879[6], which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as

[1] This includes the Official Trustees appointed under Act XVII of 1864, 7 Cal. 499; and the Administrators General; and see 7 Ben. 446; but it would not include a municipal commissioner or any other person comprised in the Penal Code, sec. 21, cl. 10.

[2] Act I of 1868, sec. 2, cl. (9).

[3] *Ibid.* cl. (10).

[4] The day on which the Code came into force.

[5] 3 Bom. 161: 8 Bom. 287, 294.

[6] The day on which Act XII of 1879 was passed.

if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865[1]:

The Burma Courts Act, 1875:

The Panjáb Courts Act, 1877[2]:

The Oudh Civil Courts Act, 1879:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property[3].

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

Sections extending to Provincial Small Cause Courts.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865[4], and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

[1] Now to be construed as referring to the Central Provinces Civil Courts Act 1885 (Act XVI of 1885, sec. 1).

[2] See now Act XVIII of 1884.

[3] 13 Cal. 223.

[4] To be construed as referring to the Provincial Small Cause Courts Act, 1887 (IX of 1887, sec. 2, cl. 3).

6. Nothing in this Code affects the jurisdiction or procedure— Saving of jurisdiction and procedure of certain Courts.

(*a*) of Military Courts of Request[1];

(*b*) [*repealed by Act VIII of* 1887];

(*c*) of Village Munsifs or Village Panchâyats under the provisions of the Madras Code[2]; or

(*d*) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab or Bassein[3];

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to

(*a*) the jurisdiction exercised by certain jágírdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act No. XV of 1840 in the cases therein mentioned, and Saving of certain Bombay laws.

(*b*) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and chapter XXXIX, and by the Presidency Small Cause Courts Act, 1882[4], this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay[5]. Presidency Small Cause Courts.

[1] 44 & 45 Vic. c. 58, ss. 148-150. They exist only where any part of Her Majesty's regular forces is serving in India beyond the jurisdiction of a Court of Small Causes. 'India' here is defined (*ibid.* s. 190, cl. 21) as 'any territories the government of which is vested in Her Majesty by or in pursuance of 21 & 22 Vic. c. 106, and also any territories in India under the dominion of any native prince or princes.' The Indian laws relating to military Courts of Requests were repealed by Act VIII of 1887.

[2] Mad. Regs. 4 of 1816, 5 of 1816, and 12 of 1816.

[3] Act XVII of 1875, sec. 66.

[4] Act XV of 1882.

[5] The rest of this section was repealed by Act XV of 1882, sec. 2; 6 Mad. 431.

Division of Code.

9. This Code is divided into ten Parts as follows :—

The first Part:	Suits in General.
The second Part:	Incidental Proceedings.
The third Part:	Suits in Particular Cases.
The fourth Part:	Provisional Remedies.
The fifth Part:	Special Proceedings.
The sixth Part:	Appeals.
The seventh Part:	Reference to and Revision by the High Court.
The eighth Part:	Review of Judgment.
The ninth Part:	Special Rules relating to the Chartered High Courts.
The tenth Part:	Certain Miscellaneous Matters.

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PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

No exemption by descent or place of birth.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature[1]

Courts to try all civil suits unless

[1] Thus the Courts have entertained the following suits: suit to declare the plaintiff's right to be restored to his caste, 7 Suth. Civ. R. 299: suit to declare that an alleged Hindú marriage is invalid, 6 Ben. 243: suits between Hindús for divorce or for restitution of conjugal rights, *ibid.* 252: 4 N. W. P. 109: suit for breaking a curdpot in a temple on a certain day, 9 Bom. H. C. 413 and many others. But they have refused to entertain the following declaratory suits: suit for a declaration that the plaintiff is a member of a Hindú society from which he has been excluded, such exclusion neither depriving him of caste, nor affecting any right of property, 3 Ben. App. Civ. 91: suit for a declaration that the plaintiff is entitled to be summoned to all marriages, and to receive a present of *pán* from the members of a particular community (S. D. A. 1854, p. 1850): or to offerings made by *jájmans* to family priests, S. D. A. 1852, p. 398; 1 Hay, 365; 5 Suth. Civ. R. 225: or to a mere dignity unconnected with any emoluments (2 Bom. 476: 6 Bom. 119): and the following suits for damages:—for loss of honours and voluntary offerings at a temple, 5 Mad. 313: for intrusion on an officer to which no fees were of right appurtenant (2 Bom. 470: 7 Mad. 91): for not offering food to an idol (6 Bom. 122): against a magistrate acting judicially and with jurisdiction, though carelessly and irregularly (7 Ben. 449): and the following suits for specific performance of alleged obligations: to compel a Hindú widow to adopt a son (19 Suth. 127: 7 Cal. 288: 7 Moo. I. A. 206): to compel hereditary priests of a temple to put certain ornaments on the god's image on certain days, 5 Bom. 83: to compel Hindús against their will to invite other Hindús to their houses or their entertainments, 6 Suth. Civ. R. 325. So the Courts have rejected a suit by one purohit against another purohit for interfering with an alleged exclusive right of performing ceremonies at a certain place, Marshall, 161, and see the case in 3 Moo. I. A. 198; and suits against barbers to compel them to shave the plaintiffs (Sadr Decisions, 1854, p. 465), or to pare their nails (1 Suth. Civ. R. 352, col. 1). For other cases in which a suit was held not 'of a civil nature,' see 7 Mad. 91, and supra, p. 391. A suit is not maintainable to establish a right to a mere dignity unconnected with any fees, profits or emoluments, 6 Bom. 121, following 2 Bom. 476 and a decision of the Privy Council in 3 Moore, I. A. 198. A suit by a temple servant for damages for omitting to make a daily offering of rice and cake to the

specially barred.

excepting suits of which their cognisance is barred[1] by any enactment for the time being in force.

Explanation.—A suit in which the right to property[2] or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies[3].

Plea of pending suit.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before her Majesty in Council[4].

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action[5].

Res judicata.

13. No Court shall try any suit[6] or issue[7] in which the

idol will not lie, unless indeed he sues as representing the idol, 6 Bom. 122.

[1] i. e. expressly barred. Giving a concurrent remedy (see e. g. sec. 318) does not bar a suit for possession by a purchase at an execution-sale, 14 Cal. 645.

[2] In 7 Bom. 329, the Court adjudicated on the right of exclusive worship of an idol in a sanctuary set up by a caste. Hindú idols are property, 4 Mad. 315; and see 2 Mad. 62. The right to perform the worship of an idol is 'property,' 3 Cal. 390, 391.

[3] 'The members of a sect are entitled, subject to the rules made by the duly constituted authorities of the sect, to take part in its public worship; and if any member is wrongfully prevented from so doing, he is entitled to relief from the Civil Courts,' 6 Mad. 153. The words 'or tenets' should be added to the explanation, 5 Mad. 318.

[4] As to the plea of *lis alibi pendens*, see Daniell's Chan. Practice, 6th edition, i. 459: Story, Equity Pleadings, secs. 736-744.

[5] Story, Equity Pleadings, sec. 741. It follows, therefore, that the existence of a decree of a foreign Court is no bar to the execution of a decree of a Court in British India, even though the cause of action in both suits be the same, 7 Cal. 82, where the foreign decree had been obtained in Chandernagore on the basis of the decree of a British Indian Court.

[6] i. e. such a matter as might have formed the subject of a separate suit independently of the special provisions of the Code, such as sec. 45, per Mahmúd J.; 7 All. 252. This does not apply to proceedings on execution, 3 All. 185: and see 11 Bom. 114.

[7] The answer of *res judicata* is admissible to estop a defendant from defence as well as a plaintiff from attack, 6 Bom. 485; so in England *Outram* v. *Morewood*, 3 East, 346, 365.

matter[1] directly and substantially in issue has been directly and substantially in issue in a former suit[2] between the same parties, or between parties under whom they or any of them claim[3], litigating under the same title, in a Court of jurisdiction competent[4] to try such subsequent suit[5] or the suit in which such issue has been subsequently raised, and has been heard and finally decided[6] by such Court.

Explanation I.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought[7] to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit[8].

[1] The Madras High Court has limited this to matters of fact, 5 Mad. 304. But see 4 All. 55 (construction of bond). It is the 'matter in issue' (Evidence Act, sec. 3), not the 'subject-matter' of the suit that forms the essential test of *res judicata*, 4 All. 58.

[2] i.e. a former civil suit. The judgment of a criminal court will not operate as a bar, 4 All. 99. Nor will a decision in former execution proceedings, 3 All. 141. That decisions by revenue courts do not make a matter in issue *res judicata*, see 3 All. 521. But see 5 All. 280: and 9 All. 388. As to judgments in rent-suits, 6 Cal. 406; and see 12 Cal. 563, 580.

[3] 8 All. 91.

[4] i.e. to try and dispose of the suit or issue on account of its nature 'with conclusive effect,' otherwise the higher jurisdiction provided by the Code would be excluded by the lower, 9 Bom. 81: 8 Mad. 83. And the competence must exist at the time when the first suit was brought, 10 Cal. 697: 11 Cal. 157.

[5] 9 Cal. 439, following Sir B. Peacock in 8 Suth. Civ. R. 175: 11 Cal. 301: S. C. L. R., 9 I. A. 204.

[6] These words apply, not to the expression of opinion in the judgment, but to what has been decided by the decree, 4 Mad. 136. A suit dismissed on the ground of 'uncertainty,' 9 All. 155, or of multifariousness, or for failure to appear, is not 'finally decided,' 13 Ben. App. 37: 6 Bom. 482. Nor is a suit against *A* and *B* for a joint jama, when dismissed on the ground that the jama is several, Marshall, 418. But where a decree is passed in accordance with a compromise, see sec. 175 infra.

[7] 5 Bom. 594.

[8] 10 Bom. H. C. 293: 3 All. 189: 4 All. 22. Explanation II must be taken to refer to the title litigated in the former suit as contra-distinguished from the relief claimed. Where several independent grounds of action are available, a party is not bound to unite them all in one suit, though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action, per Muttusámi Ayyár J., 7 Mad. 265. Explanation II is not intended to enable a party to treat a point as having been decided in his favour in a former suit, which was in fact not so decided. It applies to a case where the defendant had a defence

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused[1].

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party[2] or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made[3].

Explanation V.—Where persons litigate *bonâ fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating[4].

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case[5]:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

which he might if he had so pleased and ought to have brought forward, but he did not do so and the suit was decided against him. Then he is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up the defence in any future suit under similar circumstances, 5 Cal. 925, per Garth C.J.

[1] This applies to relief claimed which the Court is bound to grant with reference to the matters directly and substantially in issue, 4 Mad. 310.

[2] An *ex parte* decree is not 'final' so long as it is open to the Court, on the application of the parties, to modify it, 7 Cal. 25.

[3] Everything that should have the authority of *res judicata* is and ought to be subject to appeal, Savigny, cited 7 Bom. 466.

[4] 10 Mad. 223. This explanation does not refer to bona fide defences but to bona fide claims, 6 Mad. 121.

It is not limited to suits under sec. 30, 2 Mad. 332. It only applies to cases where several different persons claim an easement or other right by one common title, as for instance where the inhabitants of a village claim by custom right of pasturage over the same tract of land, or to take water from the same spring or well, 6 Cal. 54, referring to *Arlett* v. *Ellis*, 7 B. & C. 346, and *Blewitt* v. *Tregonning*, 3 A. & E 554. See also 8 Mad. 496: 10 Mad. 82: 6 Cal. 33

[5] *The Delta*, 1 Prob. Div. 393, and see 4 Mad. 359, where an *ex parte*

(*c*) if it is in the opinion of the Court before which it is produced contrary to natural justice[1]:

(*d*) if it has been obtained by fraud[2]:

(*e*) if it sustains a claim founded on a breach of any law in force in British India[3].

CHAPTER II.

OF THE PLACE OF SUING.

Court in which suit instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent[4] to try it[5].

Suits instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

(*a*) for the recovery of immoveable property[6],

(*b*) for the partition of immoveable property,

(*c*) for the foreclosure or redemption of a mortgage of immoveable property,

decree was given at Mahé against a native of British India on a cause of action arising in British India.

[1] This would enable the Court to disregard a foreign judgment in cases in which, by a faulty or irregular procedure, the defendant had not been allowed the opportunity of fairly defending the suit, 4 Mad. 365. That the validity and service of summonses etc. alleged to have emanated from a foreign court must be strictly proved, see 11 Bom. 241. That a decree on a foreign judgment must be executed according to the rules and procedure of British Indian Courts, see 2 Mad. 337, where a decree against *A* personally for the full amount due on a French judgment against his deceased father was limited to the assets of the deceased. That a call-order made by the Court of Chancery in England upon a contributory of a company registered in England and being wound up under the authority of that Court is treated by the Indian Courts as a foreign judgment, see 8 Bom. H. C., O. C. J. 200.

[2] See 4 Suth. Civ. R. 108; 15 *ibid.* 500. As to the meaning of 'fraud' see supra, Vol. I. pp. 98 n. 2, 555.

[3] See the English decisions on the subjects dealt with by this section in Smith's Leading Cases, 9th ed. pp. 868-882, and Piggott's Foreign Judgments, 2nd ed. pp. 106-175.

[4] i. e. having jurisdiction with reference to the pecuniary value and nature of the suit, 7 All. 239. The corresponding section of the Code of 1859 does not affect the jurisdiction of a Subordinate Judge to try a suit wherein are joined several causes of action the cumulative value of which exceeds rs. 1000, although, if several suits had been brought on these several causes, such suits must have been instituted in the Munsif's Court, 6 Cal. 6.

[5] This provision is a rule of procedure, not jurisdiction. It is imperative on the suitor, and intended to prevent the Court of the higher grade from being over-crowded with suits. But such Court is not bound to take advantage of it, 7 All. 234, 240. And see sec. 331 infra.

[6] See the definition of immoveable property, supra, Vol. I. p. 487.

(*d*) for the determination of any other right to or interest in immoveable property[1],

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate[2]:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section 'property' means property situate in British India[3].

Suits instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(*a*) the cause of action[4] arises, or

(*b*) all the defendants, at the time of the commencement of

[1] That a suit to follow the purchase-money of land on which the plaintiff had a mortgage and which has been taken up under the Land Acquisition Act, does not come under clause (*d*), see 6 Mad. 344, and compare *In re Stewart's Trusts*, 22 L. J., N. S. Chan. 369.

[2] A suit therefore will not lie in a British Indian Court for land situate in a Native State (2 Mad. H. C. 437), and consent of parties cannot give jurisdiction in such cases, 9 Bom. H. C. 242. Whether a Court will decree the sale of mortgaged land situate in British India, but outside its jurisdiction, see 9 Bom. H. C. 12: 9 Ben. 171.

[3] This section does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

[4] i. e. according to the High Court at Madras, the whole cause of action, including every fact necessary to the maintenance of the action, 3 Mad. H. C. 384. But the Allahabad High Court holds that here 'cause of action' does not mean 'whole cause of action,' but includes *material* part of the cause of action, 4 All. 425, and see 13 Ben. 461, 14 Ben. 367. A suit for compensation for breach of contract may accordingly be brought either at the place where the contract was made and the defendant's obligation established, or where performance was to be had and breach occurred, 5 All. 279, 280. The English Courts have ruled that in the C. L. P. Act, 1852, sec. 18, 'cause of action' means, not the whole cause of action, i. e. contract and breach, but 'the act on the part of the defendant which gives the plaintiff his cause of

the suit, actually and voluntarily reside[1], or carry on business, or personally work for gain; or

(*c*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides[1], or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside[1] at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(*a*) *A* is a tradesman in Calcutta. *B* carries on business in Delhi. *B*, by his agent in Calcutta, buys goods of *A*, and requests *A* to deliver them to the East Indian Railway Company. *A* delivers the goods accordingly in Calcutta. *A* may sue *B* for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where *B* carries on business.

(*b*) *A* resides at Simla, *B* at Calcutta, and *C* at Delhi. *A*, *B* and *C* being together at Benares, *B* and *C* make a joint promissory-note payable on demand, and deliver it to *A*. *A* may sue *B* and *C* at Benares, where the cause of action arose. He may also sue them at Calcutta, where *B* resides, or at Delhi, where *C* resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court[2].

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local

Suits for compensation for

complaint' (*Jackson* v. *Spittall*, L. R., 5 C. P. 542: *Vaughan* v. *Weldon*, L. R., 10 C. P. 47).

[1] This is to be construed broadly, so as to prevent a debtor from evading the claims of his creditors, 6 Bom. 102. As to the meaning of 'residence' and dwelling-place, see 1 All. 51. The residence intended is not an exclusive residence, see L. R., 1 I. A. 396, 397 (a case as to a condition). As Lord Kenyon said (*Rex* v. *Sargent*, 5 T. R. 466), 'it never can be contended that in order to constitute a residence in any place, it is necessary to reside any given number of days, or even any great part of the year. It happens perpetually that persons have different places of abode, in some of which they reside more or less, as suits their convenience.'

[2] This section does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

wrongs to person or moveables.

limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

Illustrations.

(*a*) *A*, residing in Delhi, beats *B* in Calcutta. *B* may sue *A* either in Calcutta or in Delhi.

(*b*) *A*, residing in Delhi, publishes in Calcutta statements defamatory of *B*. *B* may sue *A* either in Calcutta or in Delhi.

(*c*) *A*, travelling on the line of a railway company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the company. He may sue the company either at Howrah or at Allahabad.

Suits for immoveable property (*a*) in single district, but in different jurisdictions; (*b*) in different districts.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate: provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognisable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate[1].

Power to stay proceedings where all defendants do not reside within jurisdiction.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

[1] And the Court, if it decrees the sale of the whole property, may order such sale to be made, 8 Cal. 703: 14 Cal. 661. Section 19 does not apply to the High Court in the exercise of its original civil jurisdiction, sec. 638, infra.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Application when to be made.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit[1].

Remission of court-fee where suit instituted in another Court.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee: provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

Procedure where Courts in which suit may be instituted subordinate to same appellate Court.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed[2].

Procedure where they are not so subordinate.

23. Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed[3].

[1] 6 Mad. 349. Sec. 20 contains the only provision in the Code for staying proceedings. There is no express power to stay frivolous or vexatious suits, as there is in England under Order xxv. r. 4.

[2] The order for transfer will not be made unless the suit is brought in a Court having jurisdiction, 9 All. 191, approving of 6 Cal. 30.

[3] This is intended to provide for those cases where on the ground of

Procedure where they are subordinate to different High Courts.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate [1], apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court [2] shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed [3].

Transfer of suits.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try [4] the suit itself, or transfer it for trial to any other such subordinate Court competent [5] to try the same in respect of its nature and the amount or value of its subject-matter [6].

expense or convenience or some other good reason the Court thinks the place of trial ought to be changed. A defendant desiring a transfer ought clearly to explain by petition and affidavit the nature of the claim and defence, the issues, the evidence required, and then satisfy the Court that the change is desirable, 9 Cal. 980.

[1] that the suit may be transferred to another Court having jurisdiction but subordinate to another High Court.

[2] i.e. the High Court mentioned in the first clause of this section.

[3] In 5 All. 60 it was held that this section does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed and, if necessary, to stay all further proceedings within its own jurisdiction. If this had been the intention of the legislature, it would surely have given express power to stay proceedings, as in secs. 20, 476.

[4] Unless the evidence is retaken there is no trial, 7 All. 342.

[5] i.e. having jurisdiction, 7 All. 239.

[6] An order under this section transferring a suit in which an appeal would lie from the decree made therein is not subject to revision by the High Court, 6 All. 233. The High Court cannot under this section transfer an appeal unless the Court from which the transfer is sought to be made has jurisdiction to hear the appeal, 6 Cal. 30.

Section 25 is applicable to cases of winding-up companies, 9 All. 182.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Persons who may be joined as plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly[1], severally[2] or in the alternative[3] in respect of the same cause of action[4]. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall

[1] 9 All. 486.

[2] Thus where eight trustees of a charity brought an action for a libel contained in a letter written by the defendant, it was held in England that they might rightly join, though no joint injury was shown, *Booth* v. *Briscoe*, 2 Q. B. D. 496. Each had a separate right to sue arising out of the same cause of action. But in 11 Cal. 524, where thirteen deserters committed to jail under one warrant and for the same offence jointly sued the gaoler for wrongful detention after the expiry of their term of imprisonment, the plaint was taken off the file, because 'the causes of action, though similar in nature, were in fact distinct and separate.' This decision ignored the word 'severally' and seems erroneous.

The Madras High Court once said that in a suit to recover property, in the absence of a special provision, all the co-owners should be joined as plaintiffs, or, if they refuse, as defendants, 3 Mad. 234.

[3] The words 'in the alternative' apply to cases in which there is a doubt as to who is the person entitled to sue, 6 Mad. 243; whether, e.g. principal or agent should be plaintiff. They also, apparently, permit a plaintiff to join two separate alternative causes of action against the same defendant, *Bagot* v. *Easton*, 7 Ch. D. 1.

[4] From the English Order xvi. r. 1, but with the addition of the words 'in respect of the same cause of action;' i.e. the same set of facts which give or may give *A* a right to legal relief against *B*. And see 6 Bom. 266, 275, where Sargent J. said that here 'cause of action meant not only the act complained of, but also the right violated by that act.' Where one of two Hindú widows and her adopted son sued as co-plaintiffs claiming either the whole family estate for the son if the adoption were valid, or, if the adoption were invalid, half the estate for the plaintiff widow, the suit was held bad for misjoinder, 6 Mad. 239; and see 6 Bom. 266, 275. In the Madras case there were antagonistic claims arising out of the same cause of action.

be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

Court may substitute or add plaintiff for or to plaintiff suing.

27. Where a suit has been instituted in the name of the wrong person as plaintiff [1], or where it is doubtful whether it has been instituted in the name of the right plaintiff [2], the Court may, if satisfied that the suit has been so commenced through a *bonâ fide* mistake [3], and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted [4] or added as plaintiff or plaintiffs upon such terms as the Court thinks just [5].

Persons who may be joined as defendants.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter [6]. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of parties liable on same contract.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundís and promissory notes [7].

[1] e.g. by beneficiary instead of trustee, by mortgagor instead of mortgagee.

[2] e.g. in an action for breach of a contract made by an agent.

[3] of law or of fact, *Ducket* v. *Gover*, 6 Ch. D. 82.

[4] It has been held in England that a new plaintiff cannot be substituted for the original plaintiff except by consent of the latter, *Emden* v. *Carte*, 17 Ch. D. 169, where the Court added a plaintiff and gave him the conduct of the suit.

[5] See *Turquand* v. *Fearon*, 4 Q. B. D. 280.

[6] From the English Order xvi. r. 4, with the addition of the words 'in respect of the same matter,' 8 Cal. 172. Sec. 28 is not imperative, 8 Cal. 238. It does for defendants what sec. 26 does for plaintiffs. It was said in Council that sec. 28 would enable a landlord to proceed in a single suit for the enhancement of the rent of the tenants of a whole estate. In England, *A* sued *B* for trespass on land of which *A* was lessee under *C*. The defence was a right of way granted by *C*. It was held that *A* might add *C* as a defendant, claiming against him, in case the right of way was established, damages for breach of covenant for quiet enjoyment, *Child* v. *Stenning*, 5 Ch. D. 695. But a stranger to a contract of which specific performance is sought cannot be a party to a suit. Where, therefore, *A* sues as against *B* for specific performance of a contract to sell lands and as against *C* for a declaration that he was not entitled to any charge on those lands, *C* is improperly made a party, 5 Bom. 177. See 12 Cal. 555.

[7] Thus the holder of bills of ex-

30. Where there are numerous parties[1] having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested[2]. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct[3].

One party may sue or defend on behalf of all in same interest.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it[4].

Suit not to fail by reason of misjoinder.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action[5].

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant[6], improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time[7] either upon or without

change may join the drawer and the acceptor as co-defendants in the same suit, 3 Cal. 541.

[1] i.e. persons, 9 Cal. 606. The first part of this section implies that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same, 5 All. 606. That when there is community of interest among a large number of persons a few should be allowed to represent the whole, see 3 Mad. H. C. 229.

[2] See Order xvi. r. 9.

[3] This section applies to a case where many persons are jointly interested in obtaining relief, 7 All. 182, per Petheram C.J.; as, for instance, where one part-owner of a ship sues on behalf of himself and his co-owners for freight, *De Hart* v. *Stevenson*, 1 Q. B. D. 313, or where one co-owner of a patent sues for an infringement, *Sheehan* v. *G. E. Ry. Co.*, 16 Ch. D. 59. Its object is to save the record from being incumbered. It does not allow individuals to sue on behalf of the general public, but it enables some of a class having special interests to represent the rest of the class, 9 Mad. 463. It applies to suits affecting the property of a Malabar *tarawád*, which 'is something in the nature of a corporation,' but not the kind contemplated in sec. 435, 6 Mad. 125: 10 Mad. 327.

[4] Order xvi. r. 11.

[5] 6 Bom. 275.

[6] Thus if an officer of a corporation or company be made a defendant for purposes of discovery only, his name should be struck out, as the necessary relief can be got under sec. 124; see *Wilson* v. *Church*, 9 Ch. D. 552.

[7] even, apparently, after decree, 6 Mad. 227.

such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff[1], and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit[2], be added[3].

Consent of person added as plaintiff.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent[4] thereto[5].

Parties to suits instituted under s. 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added[6] as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons[7].

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it seems proper[8].

[1] 7 Bom. 167. But see 10 Mad. 44.

[2] i.e. (as a rule) questions directly arising out of and incident to the original cause of action, in which, either in character of plaintiff or defendant, the person to be joined has an identity or community of interest with that party in the litigation on whose side he is to be ranged, 2 All. 743, per Straight J.

[3] This section applies to a suit which is to some extent properly instituted, though partially defective. There is no jurisdiction at the hearing to add a plaintiff unless the original plaintiff had some title to sue, 6 Cal. 371, 376: 4 Cal. 359: 6 Mad. 331 (where application to be made plaintiffs was granted). The object of this provision is to enable the Court to try and determine, once for all, material questions common to the parties and to third parties and not merely questions between the parties to the suit, 5 Mad. 52. As to assignees *pendente lite*, see 8 Bom. 323, and *Kino* v. *Rudkin*, 6 Ch. D. 160. The Secretary of State for India in Council may be added, 9 Cal. 277. For the exercise of these powers no period of limitation is provided: they may be used so long as the case is *sub judice*, 12 Cal. 651.

[4] This need not be in writing, as under the corresponding English rule.

[5] Because the suit may be improperly brought, and if a person were made plaintiff without his consent, he might also be made liable for costs, 7 Cal. 244. If a person objects to be made a plaintiff, the proper course is to make him a defendant. But the section does not contemplate an application by the person proposed to be added, 5 Cal. 882, 886.

[6] whether on the application of the plaintiff, or on their own application, or by the Court acting on its own authority and without any application, 2 All. 491, 492.

[7] Order xvi. r. 11.

[8] See Order xvi. r. 39.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants[1].

Where defendant added, plaintiff to amend.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing[2]; and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or misjoinder.

35. When there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding under this Code: and in like manner when there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any such proceeding[3].

Any party may authorise any other party to appear etc. for him.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Authority to be in writing, signed and filed.

Recognised Agents and Pleaders.

36. Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force[4], be made or done by the party in person, or by his recognised agent[5], or by a pleader duly appointed[6] to act on his behalf:

Appearances etc. may be in person, by recognised agent, or by pleader.

Provided that any such appearance shall be made by the party in person, if the Court so direct[7].

[1] Order xvi. r. 13. But as to consolidated suits see *In re Wortley*, 4 Ch. D. 181.

[2] 7 Cal. 594, 603: 8 Cal. 277: 6 All. 57.

[3] 2 Bom. H. C., A. C. J. 103.

[4] See, e. g., sec. 404 infra: 4 Bom. H. C., A. C. J. 91. That a recognised agent cannot sue or appear in his own name, see 5 Ben. Appx. 11: 2 N. W. P. 179.

[5] 13 Suth. Civ. R. 344: 15 ibid. 245. He cannot address the Court as a suitor may do, 3 ibid. 108.

[6] i. e. duly appointed according to the law regarding pleaders in force in the particular Court, 8 Bom. 105.

[7] In the case of a pauper, sec. 36 is controlled by sec. 404, see 4 Bom. H. C., A. C. J. 91.

Recognised agents.

37. The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

Persons holding general powers-of-attorney.

(*a*) persons holding general powers-of-attorney[1] from parties not resident[2] within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties;

Certificated mukhtárs holding special powers.

(*b*) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorising them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

Persons carrying on business for parties out of jurisdiction.

(*c*) persons carrying on trade or business for and in the names of parties not resident[3] within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts[4].

Recognised agents in Panjáb, Oudh and Central Provinces.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognised agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf[5].

Service of process on recognised agent.

38. Processes served on the recognised agent[6] of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

[1] Bourke, O. C. J. 244. The power must be duly stamped, see infra, Act I of 1879, sched. I. art. 50.

[2] This covers every absence which may reasonably be supposed to have been contemplated by the legislature. It must be construed broadly, so as not to prevent a creditor from enforcing his claims against his debtor, 6 Bom. 100, 102.

[3] 6 Bom. H. C. 159.

[4] This clause must be read with sec. 76, 4 Bom. 416. For a case in which a firm was held not within cl. (*c*), see 8 Bom. H. C. 159. As to the agent of a firm ceasing to exist, or to carry on business, see 13 Suth. Civ. R. 344: 9 Bom. H. C. 427. As to the Political Agent appointed to manage the estate of a minor Chief, 11 Bom. 53.

[5] See the Panjáb Notification No. 3857, dated Oct. 3, 1877: and *The N. W. Provinces and Oudh Gazette*, July 27, 1878, p. 1058.

[6] But an order directed to be served on an attorney cannot be served on his clerk, 1 Hyde, 116.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognised agent[1].

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in court. Appointment of pleader.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court[2], or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client[3].

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person[4]. Service of process on pleader.

41. Besides the recognised agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process. Agent to receive process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in court. His appointment to be in writing signed and filed.

[1] Of course sec. 38 does not bar service on the parties themselves, Suth. 1864, Mis. 21.

[2] Cf. the English Order vii. r. 3.

[3] That a new vakálatnáma is unnecessary in proceedings subsequent to decree, see 8 Suth. Civ. R. 92 (appeals to the Queen in Council): 12 ibid. 465 (application for a new trial): 5 Bom. H. C., A. C. J. 83 (resisting claim to property attached in execution): 4 Mad. H. C. Rulings, xliii (suit remanded by appellate Court).

[4] 6 Bom. H. C., A. C. J. 141 (order requiring party to attend and give evidence). As to divorce suits, see 6 Bom. 416, 429.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

Suit how framed.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit to include whole claim.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action[1]; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court[2].

Relinquishment of part of claim.

If a plaintiff omit to sue[3] in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished[4].

Omission to sue for one of several remedies.

A person entitled to more than one remedy[5] in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court

[1] i.e. the cause of action upon which the suit is brought, 8 Mad. 520; see 12 Cal. 291. One of the reasons for prohibiting the splitting of an entire demand is that the defendant be not put to unnecessary vexation, and one test is whether the same evidence and the same arguments apply in the two cases.

[2] 9 Mad. 279.

[3] The words 'omit to sue' include accidental or involuntary omission, 11 Moore, I. A. 605 (S. C., 8 Suth. P. C. 3).

[4] 9 Cal. 143, affirmed by the P. C., 12 Cal. 482: 2 All. 838: 3 All. 543, 660: 4 All. 171. Thus where the property of a Hindú family consisted of lands as well as debts, and two of the family at first sued for a partition of the debts only and then compromised and withdrew the suit without the permission of the Court, a second suit brought by them for a partition of the whole property was barred, 7 Bom. 182. So where *A* sued for rent at an enhanced rate for a certain year, he could not afterwards sue for the original rent for previous years. The correct test is whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation of the former suit, 11 Moo. I. A. 605. Thus where *A* deposits three Government promissory notes with *B*, who misappropriates them, and *A* sues *B* for two of the notes, *A* cannot afterwards sue *B* for the third note, ibid. For other cases in which the second suit is barred, see 4 Suth. Ref. 20: 12 Suth. Civ. R. 79: 14 ibid. 253: 18 ibid. 337: 21 ibid. 223: 3 Ben. A. C. J. 265: 7 Bom. 377.

For cases in which the second suit is not barred, see 4 All. 180, 461: 6 All. 616: 7 All. 624: 9 All. 23: 7 Bom. 446: 8 Cal. 819: 12 Cal. 60, 339; and see Act IV of 1882, sec. 99.

Where the plaintiff omits to sue in respect of a portion of his claim, stating that he does not relinquish it, but means to sue again for it, he can, of course, gain nothing by such statement, 2 N. W. P. 90.

[5] i.e. entitled at the time of suing for the first remedy, 3 All. 857.

obtained before the first hearing[1]) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action[2].

Illustration.

A lets a house to *B* at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. *A* sues *B* only for the rent due for 1882. *A* shall not afterwards sue *B* for the rent due for 1881[3].

Only certain claims to be joined with suit for recovery of land.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court[4], be joined with a suit for the recovery of immoveable property[5], or to obtain a declaration of title to immoveable property, except—

(*a*) claims in respect of mesne profits[6] or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage[7].

Claims by or against executor, administrator or heir.

Rule b.—No claim by or against an executor, administrator or heir[8] as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the

[1] The application for leave is in time if made directly the case is called on, and before anything has been done towards the hearing, 5 Bom. 463, 465.

[2] Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he may, notwithstanding anything contained in this section, institute a suit for sale of the property, under sec. 67 of the Transfer of Property Act, supra, Vol. I. p. 780.

[3] 6 Cal. 793: 12 Cal. 50.

[4] In England leave has been given to join with an action for the recovery of land, (*a*) a claim to recover a deed relating to the land, and to recover personal estate comprised in the same instrument, 2 Ch. D. 111; (*b*) a claim for a receiver, 24 W. R. 845; (*c*) where the plaintiff was both heir at law and one of the next of kin of an intestate, a claim for administration, 24 W. R. 901.

[5] 5 Mad. 161.

[6] As to these, see 8 Cal. 332, 343, 8 Suth. Civ. R. 104, where the expression was interpreted as meaning 'those profits which a person in actual wrongful possession of certain land did actually receive, or might with ordinary diligence have received, from that land.'

[7] Order xviii. r. 2. There is no appeal from an order under sec. 44. rule *a*, 8 All. 191.

[8] 6 Bom. 390, 393.

plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents[1].

Plaintiff may join several causes of action.

45. Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly[2] interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit[3].

Court may order separation.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof[4].

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

Defendant may apply to confine suit.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded[5], apply to the Court for an order confining

[1] 9 All. 221.

[2] *Jointly* (not necessarily *equally*) interested as to the subject-matter of the suit which the causes of action have in contemplation, 6 Mad. 242. 'Joint interest in the main questions raised by the litigation is a condition precedent to the joinder of several causes of action against several defendants,' 6 All. 108, per Straight J.

[3] It is a prerequisite of the right given by this section that the Court to which the plaint is presented should have jurisdiction over all the causes of action, 7 Mad. 173. That this section is not a restrictive proviso to sec. 28, see 5 All. 178, per Mahmúd J.

[4] 8 Mad. 75. This power does not, of course, extend to the dismissal of certain defendants and ordering that a fresh suit be brought against them, 8 Bom. 619. As to the procedure of the Court where there is a misjoinder, see 7 Bom. 291.

[5] but not afterwards, 7 All. 100.

the suit to such of the causes of action as may be conveniently disposed of in one suit[1].

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

Power to exclude some causes and order amendment.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

48. Every suit shall be instituted by presenting a plaint to the Court[2] or such officer as it appoints in this behalf.

Suits to be commenced by plaint.

49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in court[3].

Language of plaint.

50. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description and place of residence of the plaintiff[4];

Particulars to be contained in plaint.

[1] Order xxiii. r. 8. This section enables a defendant who is embarrassed by a multifarious suit to get the trial confined to a reasonable aggregate of causes of action, and in such a case the other causes must needs be left over for another suit, 8 Bom. 619.

[2] 2 Bom. H. C., A. C. J. 42: 10 ibid. 495, overruling 5 ibid. 117.

[3] A paper referred to in a plaint is not part of the plaint, Bourke, O. C. J. 273.

[4] Where *A* sues, under a power of attorney on behalf of *B*, the suit must be brought in *B*'s name, 1 N. W. P. 277. See also 4 ibid. 59. Where the plaintiff sells his rights *pendente lite* the vendee's name should not be substituted; but the irregularity may be cured by the defendant's consent, 3 Ben. A. C. J. 214.

When plaint may be rejected, returned for amendment, or amended.

53. The plaint may, at the discretion[1] of the Court and at or before the first hearing[2], be rejected[3], returned for amendment within a time to be fixed by the Court[4], or amended then and there, upon such terms as to the payment of costs occasioned by the amendment[5] as the Court thinks fit,

(*a*) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(*b*) if it contains any particulars other than those so required[6]; or

(*c*) if it is not signed and verified as hereinbefore required; or

(*d*) if it does not disclose a cause of action[7]; or

(*e*) if it is not framed in accordance with section 42; or

(*f*) if it is wrongly framed by reason of nonjoinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit[8]:

Proviso.

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character[9].

[1] This discretion is the discretion described in the Specific Relief Act (supra, Vol. I. p. 962), sec. 22; 7 All. 83.

[2] even after it has been registered, 2 Mad. H. C. 51. The power conferred by this section cannot be exercised by a Court of first instance after the first hearing, 7 All. 79, dissenting from 5 Bom. 609, where the Court held that the words 'at or before the first hearing' were merely directory and not mandatory. The Legislature certainly intended them to be mandatory. But the High Courts at Calcutta, 6 Cal. 332, 626, and Madras, 6 Mad. 239, agree with the Bombay High Court, and the antinomy calls for legislative solution.

[3] The judge, in considering whether he should admit or reject a plaint, should not refer to documents and facts not annexed to or stated in the plaint, nor ascertained by interrogating the plaintiff, 10 Bom. 182.

[4] 1 Mad. 427.

[5] i. e. amendment of the faults specified in this section, 7 All. 101.

[6] e.g. mere argument, or a prayer that the defendant be prosecuted for forgery, 8 Suth. Civ. R. 296.

[7] Compare the English judgment on demurrer, L. R., 6 I. A. 121.

[8] It has been held in England (under Order xxviii) that an action may be turned into an information (2 Ch. Div. 221), and that pleadings may be amended so as to raise an entirely new case requiring fresh evidence (5 Prob. Div. 26). But of course the Court, in the exercise of its discretion, may refuse to allow such an amendment.

[9] 5 Cal. 602: 7 Cal. 455: 4 Bom. 587: 7 Bom. 155: 2 Mad. 298: 9 All. 188. For example, a suit for possession with mesne profits into a suit for resumption, 6 Suth. Civ. R. 211. Were the rule otherwise, perjury and forgery would be encouraged, 9 Bom. H. C. 6-7: citing Marshall, 70, per Peacock C.J., and 5 Bom. H. C., A. C. J. 133.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

Attestation of amendment.

54. The plaint shall be rejected in the following cases:—

When plaint shall be rejected.

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(*b*) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court[1], fails to do so[2]:

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law[3]:

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time[4].

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

Procedure on rejecting plaint.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When rejection does not preclude fresh plaint.

57. The plaint shall be returned to be presented to the proper Court in the following cases:—

Return of plaint to be presented to proper Court.

(*a*) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law[5]:

(*b*) if, in a suit relating to immoveable property, but not

[1] 2 All. 875.

[2] 9 Bom. 357.

[3] Such, for instance, as sec. 424, infra, or the Limitation Act, 2 Mad. H. C. 51.

[4] Under this section a plaint can only be rejected before it is registered, 2 Mad. 308: 8 Cal. 192. That the Indian Courts have no power, like that exercised by Courts in England, to dismiss a suit with liberty for the plaintiff to bring a fresh suit for the same matter, or to enter a non-suit, see 13 Moo. I. A. 160.

[5] 7 Mad. 171: 10 Mad. 211, following 8 Bom. 313 and 8 Cal. 834. Even though the plaintiff fraudulently understates the value of the subject-matter of the suit, and the under-statement has only been detected after investigation, the plaint should be returned, 8 Mad. 62.

coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits[1].

Procedure on returning plaint.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on admitting plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements[2] of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Concise statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

Register of suits.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and

[1] The duty imposed by this section should be performed where, after the trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction, 8 Cal. 834: 2 All. 357: 8 Bom. 313, overruling 7 Bom. 487: 9 Bom. 266: 7 Mad. 171: 8 Mad. 62. As to appeals from orders under this section, see 4 All. 478. It does not apply to the original side of the High Court, infra sec. 638, and see 8 Bom. 380.

[2] See infra, Schedule IV, No. cxiv.

called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint[1].

Production of document on which plaintiff sues.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

List of other documents.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

Statement in case of documents not in his possession.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint[2].

Suits on lost negotiable instruments.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Production of shop-book.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document[3] for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return[4] the book to the plaintiff and cause the copy to be filed.

Original entry to be marked and returned.

[1] All such documents, whether irrelevant or otherwise inadmissible, must be received; but under sec. 129 of the Code [now sec. 140] the Court is competent to reject such documents and rid the record of their presence, Marshall, 127, 135, per Peacock C.J.

[2] 2 All. 754 (lost cheque).

[3] The Court is not required to *inspect* it, 3 Bom. H. C. 92, 93.

[4] See sec. 143 infra.

Inadmissibility of document not produced when plaint filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court[1], be received in evidence on his behalf at the hearing of the suit[2].

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim[3].

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

[1] 8 Bom. 377, 380. As to proof of leave, see 13 Moore, I. A. 83.

[2] The words are imperative, the object being to prevent dishonest fabrication of documents, 1 Hyde, 145, 146. But omission to produce the document on which the plaintiff sues is no ground for rejecting the plaint, 2 Bom. H. C., A. C. J. 369.

[3] Of course the judge must be satisfied of the identity of the defendant, or that the pleader who appears for him is duly instructed, 3 Ben. 402, 403, per Markby J.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

Court may order defendant or plaintiff to appear in person.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

67. No party shall be ordered to appear in person unless he resides

No party ordered to appear in person unless resident within 50, or, where railway, 200 miles.

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or, where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly [1]:

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Fixing day for appearance of defendant.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case [2].

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

Summons to order defendant to produce documents.

[1] Marshall, 307.

[2] Such as, for example, the nature of the rights involved, the importance of the claim, the distance of the parties from the court, 3 Mad. H. C. 167.

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Defendant when directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery of summons for service.

72. The summons shall be delivered to the proper officer of the Court[1], to be served by him or one of his subordinates.

Mode of service.

73. Service of the summons shall be made by delivering or tendering[2] a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

74. When there are more defendants than one, service of the summons shall be made on each defendant[3]:

Provided that, if the defendants are partners[4], and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made unless the Court directs otherwise either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having[5] the management of the business of the partnership at the principal place[6], within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person or on his agent.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service[7], in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues,

[1] As to the employment of special bailiffs, see 2 Ben., A. C. J. 59: 11 ibid. 1.

[2] Merely showing it is not enough.

[3] Where husband and wife are both defendants they must both be served, cf. the English Order ix. r. 3.

[4] i.e. apparently, when they are sued as having been partners when the cause of action accrued. See *Ex p. Young*, 19 Ch. D. 124: *Davis* v. *Morris*, 10 Q. B. D. 436, 444, and the present English Orders, ix. r. 6, xvi. r. 14.

[5] at the time of service: cf the English Order ix. r. 6.

[6] The words 'at the principal place' etc. do not refer to the defendant mentioned in clause (*a*). See, however, 11 Ben. Appx. 26, per Macpherson J.

[7] 17 Suth. Civ. R. 33, col. 2.

service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service [1].

For the purpose of this section, the master of a ship is the agent of his owner or charterer [2].

Service on agent in charge, in suits for immoveable property.

77. In a suit to obtain relief respecting [3], or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

When service may be on male member of defendant's family.

78. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

Person served to sign acknowledgment.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons

[1] This section and section 37, cl. (*c*) must be construed together. The 'manager or agent' intended is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A servant employed only to carry out orders or to execute a particular commission, and a factor or commission-agent not in any way identified with the firm for which he acts, is not such an agent, 4 Bom. 416, 422.

[2] As to service on a ship's agent, 7 Bom. H. C., O. C J. 197. Service duly made under this section seems effectual though not communicated to the real defendants. But service unduly made does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants, 4 Bom. 416, 423.

[3] See sec. 16, clauses (*a*) to (*f*): 9 Cal. 733, where the suit was for foreclosure or sale of certain immoveable property.

cannot be found.

on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides[1] and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served.

Examination of serving-officer.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath[2] touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied[3] that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason[4] the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit[5].

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual[6] as if it had been made on the defendant personally.

[1] 5 Mad. H. C. 101: 7 Bom. H. C., A. C. J. 138.

[2] See the General Clauses Act, s. 2, cl. 17, supra, Vol. I, p. 489.

[3] 19 Suth. P. C. 353, 356.

[4] The plaintiff's ignorance of the proper way to describe the parties he sought to sue is not such a reason, *Sloman* v. *Government of New Zealand*, 1 C. P. D. 563, 567.

[5] There is no provision for substituting for service a notice by advertisement in a newspaper.

[6] i. e. effectual for proceeding with the suit, and nothing more. This section must be read with the second clause of sec. 108; 2 Bom. 452.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require[1].

When service substituted, time for appearance fixed.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service when defendant resides within jurisdiction of another Court and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes, within whose jurisdiction the process is to be served,

Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts.

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service on defendant in jail.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

[1] The time should be sufficient for notice of the fact to reach the defendant wherever he may be; and if an *ex parte* decree is obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree, 2 Bom. 449.

Procedure if jail be in different district.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Service when defendant resides out of British India and has no agent to accept service.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post[1] if there be postal communication between such place and the place where the Court is situate[2].

Service through British Resident or Agent of Government.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

Substitution of letter for summons.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of sending such letter.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger

[1] under a registered cover, 15 Suth. Civ. R. 31.

[2] The question has not arisen in India, but the Courts will probably hold that this section is not confined to natural persons, but applies also to a foreign corporation having no place of business in British India; see *Scott* v. *Royal Wax Candle Co.*, 1 Q. B. D. 404.

selected by the Court[1], or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Service of Process.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs. Process to be served at expense of party issuing.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court, before the process is issued. Costs of service.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons. Notices and orders, how served.

Postage.

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded: Postage.

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court. Parties to appear on day fixed in summons for defendant.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been Dismissal of suit where

[1] But see 2 Ben. A. C. J. 59.

summons not served in consequence of failure to pay fee.

served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed[1]:

Proviso.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

If neither party appears, suit dismissed.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

In such case plaintiff may bring fresh suit:

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance[2], as the case may be, the Court shall pass an order to set aside the dismissal[3] and appoint a day for proceeding with the suit.

or Court may restore suit to file.

Dismissal where plaintiff fails for a year to apply for fresh summons.

99A. If, after a summons has, whether before or after the first day of June, 1882[4], been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure where only plaintiff appears,

100. If the plaintiff appears and the defendant does not appear[5], the procedure shall be as follows:

[1] 5 Bom. H. C. 118: 2 All. 318. 10 Mad. 270, 290. Such an order is not appealable, 9 Cal. 627.

[2] 3 Bom. H. C. 60.

[3] Such an order is not appealable,

[4] the day on which the Code of 1882 came into force.

[5] i.e. in answer to a summons under sec. 64 to appear and answer

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte:* when summons duly served,

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant: when summons not duly served;

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant[1]. when summons served, but not in due time.

If it is owing to the plaintiff's default[2] that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement[3].

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance. Where defendant appears on day of adjourned hearing, and assigns cause for previous non-appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder[4]. Where defendant only appears.

103. When a suit is wholly or partially dismissed under Decree against

the claim on a specified day, 7 All. 538. For cases in which the defendant was held *not* to have appeared, see 7 Suth. Civ. R. 81: 6 Ben. 688: 4 Bom. H. C., A. C. J. 206: 1 N.W. P. 154: 7 All 538.

[1] When the plaintiff appears and the defendant does not appear, sec. 100 applies, whether the defendant has been summoned only to appear and answer, or has, in addition, been summoned to attend and give evidence, 5 Cal. 353, 355.

[2] As, for example, when he gives a wrong address of the defendant, or fails to point him out to the serving-officer.

[3] Where the Dekkhan Raiyats Act (XVII of 1879) is in force, this section must be read with some modification, 5 Bom. 187.

[4] As to appeals from judgments against plaintiffs by default for non-appearance, see 2 Mad. 750.

plaintiff by default bars fresh suit.

section 102[1], the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action[2]. But he may apply for an order to set the dismissal aside[3]; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

Procedure where defendant residing out of British India does not appear.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Non-appearance of one or more of several plaintiffs.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Non-appearance of one or more of several defendants.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Non-appearance of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing

[1] i. e. for the plaintiff's non-appearance. Section 103 does not apply when the suit is dismissed for any other reason, 5 N. W. P. 74: 7 N. W. P. 77, 126: 3 All. 292: 4 Mad. H. C. 56.

[2] 9 Cal. 426.

[3] 7 Mad. 41.

sections applicable to plaintiffs and defendants, respectively, who do not appear.

Of setting aside Decrees ex parte.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside [1]; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause [2] from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit [3]. Setting aside decree *ex parte* against defendant.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party. No decree set aside without notice to opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

110. The parties may, at any time before or at the first hearing [4] of the suit, tender written statements of their respective cases [5], and the Court shall receive such statements and place them on the record. Written statements.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained Particulars of set-off to be given in

[1] As to the time within which this application must be made, see infra, Act XV of 1877, Sched. II. art. 154.

[2] See for illustrations of 'sufficient cause,' 2 Hyde 216: 13 Suth. Civ. R. 237: 18 ibid. 141; 25 ibid. 394: 2 Bom. H. C. 267: 3 ibid. O. C. J. 60: 7 ibid. A. C. J. 138.

[3] Under section 647 this applies to execution proceedings, as well as to suits and appeals, 10 Cal. 416, 422. The defendant may also appeal under sec. 540 against an *ex parte* decree [contra, 4 All. 387]; but then he has no evidence of his own to depend upon. He has not the advantage which he might have obtained by cross-examining the plaintiff's witnesses, and his contention on appeal must be limited either to questions of law or to such arguments as arise upon the evidence which the plaintiff has placed on the record, 8 Cal. 274, per Field J., and see 9 Mad. 445, dissenting from 4 All. 387.

[4] i.e. before the parties have entered upon their case, 4 Bom. 578.

[5] That a stranger to the suit will not be allowed to tender a statement on behalf a party, see Bourke, O. C. J. 153.

written statement.

sum of money[1] legally recoverable[2] by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit[3], the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

Inquiry.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction[4], the Court shall set-off the one debt against the other.

Effect of set-off.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not effect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree[5].

Illustrations.

(*a*) *A* bequeaths rs. 2,000 to *B*, and appoints *C* his executor and residuary legatee. *B* dies and *D* takes out administration to *B*'s effects. *C* pays rs. 1,000 as surety for *D*. Then *D* sues *C* for the legacy. *C* cannot set-off the debt of rs. 1,000 against the legacy, for neither *C* nor *D* fills the same character with respect to the legacy as they fill with respect to the payment of the rs. 1,000.

[1] 2 All. 252 (not compensation for waste by usufructuary mortgagee): and see 9 Bom. 403.

[2] For cases in which a sum was held not to be 'legally recoverable,' see 2 Suth. Civ. R. 297 (rent barred by time): 6 Suth. Ref. 26 (money spent without authority in repairs): 15 Suth. Civ. R. 252 (demand already dismissed): 16 ibid. 308 (demand based on unenforceable decree). *Rawley* v. *Rawley*, 1 Q. B. D. 460 (debt arising on unratified promise of an infant).

[3] 5 All. 301, where Straight J. remarks that at present the law of procedure in India does not sanction set-off or counter-claim as contemplated by art. 3, Order xix of the Judicature Act, 1875.

[4] 3 N. W. P. 114. In 1 Suth. Civ. R. 297, the Court seemed to think that a claim enforceable in a Collector's court could not be set-off in a civil court.

[5] It has been held that this section regulates procedure and does not take away any right of set-off which parties would have had independently of its provisions, 7 All. 284: 4 Bom. 407: 11 Cal. 560. It was never, said Garth C.J., intended to enact any new law as to what is, and what is not, the subject of set-off, 9 Cal. 918. With deference, it *was* intended by sec. 112 to state when, and when only, set-off should be allowed. The decision in 2 Mad. H. C. 296, relied on in 11 Cal. 560 and 4 Bom. 407, was on secs. 121, 195 of the Code of 1859. As to the decree where a set-off has been allowed, see sec. 216 infra.

(*b*) *A* dies intestate and in debt to *B*. *C* takes out administration to *A*'s effects, and *B* buys part of the effects from *C*. In a suit for the purchase-money by *C* against *B*, the latter cannot set-off the debt against the price, for *C* fills two different characters, one as the vendor to *B*, in which he sues *B*, and the other as representative to *A* [1].

(*c*) *A* sues *B* on a bill of exchange. *B* alleges that *A* has wrongfully neglected to insure *B*'s goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off [2].

(*d*) *A* sues *B* on a bill of exchange for rs. 500. *B* holds a judgment against *A* for rs. 1,000. The two claims being both definite, pecuniary demands may be set-off.

(*e*) *A* sues *B* for compensation on account of a trespass. *B* holds a promissory note for rs. 1,000 from *A* and claims to set-off that amount against any sum that *A* may recover in the suit. *B* may do so, for as soon as *A* recovers, both sums are definite pecuniary demands.

(*f*) *A* and *B* sue *C* for rs. 1,000. *C* cannot set-off a debt due to him by *A* alone.

(*g*) *A* sues *B* and *C* for rs. 1,000. *B* cannot set-off a debt due to him alone by *A* [3].

(*h*) *A* owes the partnership-firm of *B* and *C* rs. 1,000. *B* dies leaving *C* surviving. *A* sues *C* for a debt of rs. 1,500 due in his separate character. *C* may set-off the debt of rs. 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

No written statement received after first hearing.

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties [4], and fix a time for presenting the same:

Provisos.

[1] So a debt due as manager of a Muhammadan's estate cannot be set-off against a personal liability, 5 All. 299.

[2] 2 Mad. H. C. 296. As to setting-off a claim for unliquidated damages capable of being immediately ascertained and which was connected with the same transaction, and arose out of one and the same contract, as that in respect of which the plaintiff's suit was brought, see 4 Bom. 407, following 2 Mad. H. C. 296, and 4 ibid. 120.

[3] Joint and separate debts cannot be set-off against each other, 9 Bom. 404, citing Story, *Eq. Jur.* § 1437 a. So a shareholder cannot set-off a debt due to him from the company against calls by the liquidator in a winding-up (see *Re Whitehouse*, 9 Ch. D. 595), and directors cannot set-off any money due from the company to them against the amounts which they are ordered to replace (*Flitcroft's case*, 21 Ch. D. 519).

[4] This enables the Court to call for a written statement to supply omissions in the plaint, not to add to or vary the plaintiff's claim, 11 Suth. Civ. R. 71. As to appealing when the Court has called for a statement without any sufficient cause, see 22 Suth. 377.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Failure to present written statement called for by Court.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Frame of written statements.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove[1].

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

Written statements to be signed and verified.

115. Written statements shall be signed and verified in the manner hereinbefore[2] provided for signing and verifying plaints[3], and no written statement shall be received unless it be so signed and verified.

Power as to argumentative, prolix or irrelevant written statements.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant[4] to the suit[5], the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

[1] 3 Ben. Appx. 12: 5 Suth. Civ. R. 56, 58: 8 ibid. 296.

[2] Sec. 51.

[3] Consequently, a person filing a written statement in a suit is bound by law to state the truth; and if he makes a statement which is false to his knowledge or belief, or which he does not believe to be true, he is guilty of giving false evidence within the meaning of sec. 191 of the Penal Code, 6 All. 628.

[4] As to the 'irrelevancy' here referred to, the question is, not whether the written statement discloses a good defence, but whether the facts stated therein are such as the defendant believed to be material to his case, 10 Bom. H. C. 428.

[5] As to applications in Presidency High Courts to take statements off the file on the grounds here mentioned, see 3 Ben. Appx. 12: 10 Bom. H. C. 425.

When any amendment is made under this section, the Judge shall attest it by his signature.

Attestation of amendments.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

Effect of rejection.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in plaint and written statements admitted or denied.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally[1] by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party[2].

Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion[3] that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone

Refusal or inability of pleader to answer.

[1] Such party or person is a 'witness' (Act X of 1873, s. 5), and must therefore be sworn or affirmed.

[2] But the parties cannot question each other.

[3] The Court should record the question asked, and the grounds of such opinion, 17 Suth. Civ. R. 508, and see 2 Bom. H. C. 340.

the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse[1] to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

Power to deliver interrogatories.

121. Any party may at any time[2] by leave of the Court[3] deliver through the Court interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer[4]:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

Service of interrogatories.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

123. The Court, in adjusting the costs of the suit, shall, at

[1] See for instances secs. 176, 640, and 641, infra, 3 Mad. H. C. 167 (insufficient time), 18 Suth. Civ. R. 18 (necessary absence on service of Government).

[2] This probably means, in the case of the plaintiff, 'at any time after he has presented the plaint:' in the case of the defendant, see the proviso to sec. 121, which agrees with *Egremont Burial Board* v. *Egremont Iron Co.*, 14 Ch. D. 158.

[3] Leave of the Court is always necessary. Supra, p. 402.

[4] This section contemplates, first, leave to interrogate, and, secondly, the service of the interrogatories through the Court. The Court does not, at this stage, determine what questions must be answered, 5 Cal. 709.

the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Inquiry into propriety of exhibiting interrogatories.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly [1].

Service of interrogatories on officer of corporation or company.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant [2], or is not put *bonâ fide* for the purposes of the suit [3], or that the matter inquired after is not sufficiently material at that stage of the suit [4], or on any other like ground [5].

Power to refuse to answer interrogatories as irrelevant, etc.

[1] That an ordinary member of a company should not be interrogated unless it is shown that he has the required information and that there is no officer capable of giving it, see *Berkeley* v. *Standard Discount Co.*, 13 Ch. Div. 99, per Jessel M.R. The company's solicitor acts for the member or officer directed to answer, and charges the company with the cost, *ibid.* As to the duty of directors to obtain information for the purpose of answering interrogatories, see *Southwark Water Co.* v. *Quick*, 3 Q. B. D. 321, per Cotton L.J. Where the officer put forward by a corporation is also its attorney or pleader in the suit, he cannot object to answer on the ground of privilege under the Evidence Act, sec. 146; see *Mayor of Swansea* v. *Quirk*, 5 C. P. D. 106.

[2] See, for example, *Wier* v. *Tucker*, L. R., 14 Eq. 25: *Hodson* v. *Taylor*, L. R., 9 Q. B. 79. In England interrogatories which do not relate to any matters in question in the suit are deemed irrelevant, though they might be admissible on the oral cross-examination of a witness (Order xxxi. second proviso). That an interrogatory may be relevant as leading up to a matter in issue, see *Jones* v. *Richards*, 15 Q. B. D. 439.

[3] *Baker* v. *Lane*, 3 H. & C. 544: *The Mary or Alexandra*, L. R., 2 A. & E. 319.

[4] See *Mercier* v. *Cotton*, 1 Q. B. D. 442: *Gay* v. *Labouchere*, 4 Q. B. D. p. 207.

[5] e.g. that the question tends to criminate, or that the answer would expose him to penalties or proceedings for maintenance; and see *Lockett* v. *Lockett*, L.R., 4 Ch. App. 33 b. The Code is silent as to scandalous interrogatories, e.g. one asking whether the defendants, who were sued as husband and wife, were married.

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit[1] to be filed in court within ten days from the service thereof or within such further time as the Judge may allow[1].

Procedure where party omits to answer sufficiently.

127. If any person interrogated omits or refuses to answer, or answers insufficiently[2], any interrogatory, the party interrogating may apply[3] to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *vivâ voce* examination as the Judge may direct: provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit[4].

The admission shall also be made in writing signed by the other party or his pleader and filed in court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Power to order discovery of document.

129. The Court may, at any time during the pendency therein of any suit, order any party[5] to the suit to declare by

[1] Answers to interrogatories are simply affidavits obtained in the way which the Code provides, and the party wishing to use them at the hearing must put them in as his evidence, 4 Cal. 836, per Wilson J.

[2] As to answers containing irrelevant and improper matter, see *Peyton* v. *Harting*, L. R., 9 C. P. 9: as to embarrassing answers, *Lyell* v. *Kennedy*, 27 Ch. D. 1: as to extremely prolix answers, *Lyell* v. *Kennedy*, 33 W. R. 44.

[3] The application should specify the interrogatories or parts of interrogatories to which a further answer is required, *Anstey* v. *N. & S. Woolwich Subway Co.* 11 Ch. D. 439.

[4] Compare Order xxxii. r. 2. The Code does not (as it ought) empower any party to require another party to admit any specific fact.

[5] That an order under this section cannot be made against the next friend of an infant or lunatic, see *Dyke* v. *Stephens*, 30 Ch. D. 189, dissenting from *Higginson* v. *Hall*, 10 Ch. D. 235.

affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit[1], and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Every affidavit made under this section shall specify[2] which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection. Affidavit in answer to such order.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party[3] thereto of such of the documents in his possession[4] or power relating to[5] any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just[6]. Power to order production of documents during suit.

131. Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of Notice to produce for inspection documents referred to in plaint, etc.

[1] e.g. the documents of title of a defendant in ejectment, 3 C. P. D. 196.

[2] As to sufficiency of specification, see *Taylor* v. *Batten*, 4 Q. B. D. 85.

[3] not by his pleader, Suth. 1864, Civ. R. 164: *Cashin* v. *Craddock*, 2 Ch. D. 140.

[4] i. e. exclusive possession.

[5] See 10 Cal. 808. As to the practice when a party producing documents wishes to have certain portions sealed up, see 4 Cal. 835.

[6] Order xxxi. r. 14. The Court has no discretion as to refusing to allow the production, provided the documents are not privileged, 2 Bom. 453, following *Bustros* v. *White*, L. R., 1 Q. B. D. 139. What documents are privileged depends on the Evidence Act (secs. 122, 124, 126, 129), and the English decisions necessary to supplement that measure. Thus, reports of medical men procured by a solicitor for the purposes of an action (2 Ex. D. 437); the survey of a ship made for a like purpose (3 P. D. 162); reports etc. relating to impending litigation prepared for purpose of submission to solicitor (3 Q. B. D. 315); communications between solicitor and client (4 Q. B. D. 85); communications by a third party to a solicitor with reference to actual or pending litigation (17 Ch. D. 681, 682); and, probably, documents tending to criminate the party discovering them (5 Ex. D. 23, 108).

Neither the Code nor the English Order provides for the case where relevant documents are in the joint possession of the party disclosing them and some person not a party to the suit. Such documents cannot be ordered to be produced (10 Q. B. D. 465) unless no interest can be affected by their production other than the interest of the parties to the suit, 15 Q. B. D. 473, where the defendant was liquidator of a company which had been wound up, and had, as such, the possession and control of the documents in question.

One partner of a firm represents the other partners for the purposes of production of documents, 1 Bom. 496.

the party giving such notice or of his pleader[1], and to permit such party or pleader to take copies thereof.

Consequence of non-compliance with such notice.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause[2] for not complying with such notice.

Party receiving such notice to deliver notice when and where inspection may be had.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place[3], and stating which, if any, of the documents he objects to produce, and on what grounds.

Application for order of inspection.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection[4], or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection[5].

Application to be founded on affidavit.

134. Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made.

Power to order issue or question

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof,

[1] This includes an advocate, a vakil, an attorney of a High Court, and a recognised agent, supra, pp. 466, 488; but not a co-defendant (*Bartley* v. *Bartley*, 1 Drew. 233) nor a non-professional relative (*Summerfield* v. *Pritchard*, 17 Beav. 9).

[2] *Webster* v. *Whewall*, 15 Ch. D. 120: *Quilter* v. *Heatly*, 23 Ch. D. 42.

[3] 5 Bom. 467: *Prestney* v. *Corpn. of Colchester*, 24 Ch. Div. 376.

[4] As in the case of privileged letters, 11 Cal. 655.

[5] Such order will not be made unless the applicant has taken the steps mentioned in sec. 131, 10 Cal. 56. The Code should have expressly empowered the Court to grant an order for inspection in such place and in such manner as it may think fit.

and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit[1], or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection[2].

on which right to discovery depends to be first determined.

136. If any party fails to comply with any order under this chapter[3], to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out[4], and to be placed in the same position as if he had not appeared and answered;

Consequences of failure to answer or give inspection.

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly[5].

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code[6].

[1] e.g. the existence of a partnership or agency.

[2] Order xxxi. r. 20. It empowers the Court to raise and determine, before the hearing of the cause, an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, 6 Bom. 572. For English decisions on the corresponding rule see *Wood* v. *The Anglo-Italian Bank, Ld.*, 34 L. T., N. S. 255: *Re Leigh's Estate*, 6 Ch. Div. 256.

[3] Thus when interrogatories are delivered with the leave of the Court under sec. 121, the Court virtually orders them to be answered within ten days from the date of service (sec. 126). If the party interrogated disobeys, the Court may make an order under sec. 136; 10 Cal. 506.

[4] 7 All. 159: 9 Cal. 923, where the Judge making the order said that the party against whom it was made might come in and seek to set it aside. The powers given by this section will not be exercised save in extreme cases, 5 Cal. 708, 710 (where '36' is misprinted for '136').

[5] The Court's power is discretionary, and (e.g.) a suit will not be dismissed under this section where the plaintiff fails to answer interrogatories because he has become incapable of transacting business, *Cardwell* v. *Tomlinson*, 54 L. J., Ch. 957.

[6] As regards the chartered High Courts (where a party disobeying such an order is liable to be committed for contempt), this remedy may be regarded as cumulative, 7 Bom. 1.

Court may send for papers from its own records or from other Courts.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court[1], the record[2] of any other suit or proceeding, and inspect the same[3].

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in which the application is made[4], and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1872, would be inadmissible in the suit.

Documentary evidence to be in readiness at first hearing.

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for[5] by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Effect of non-production of documents.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof[6]. And the Judge receiving any such evidence shall record his reasons for so doing.

Documents to be received by Court.

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the

[1] i.e. Court *ejusdem generis*, and not e g. the court of wards, see 15 Suth. Civ. R. 150.

[2] or such part thereof as is specified in the application, Suth. 1864, Civ. R. 272, col. 2.

[3] 7 Cal. 565.

[4] 1 Ind. Jur., N. S. 283, per Phear J.

[5] They need not *file* their documentary evidence unless it is called for, 1 Ben. A. C. J. 120.

[6] 9 Suth. Civ. R. 294.

documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct[1].

The Court may at any stage of the suit reject[2] any document which it considers irrelevant or otherwise inadmissible, recording[3] the grounds of such rejection.

Irrelevant or inadmissible documents.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

No documents to be placed on record unless proved.

Proved documents marked and filed.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry[4], and shall then return the book to the person producing it.

Entries in shop books.

All documents produced at the first hearing and not so proved or admitted shall be returned to the parties respectively producing them.

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word 'rejected,' and the endorsement shall be signed by the Judge.

Rejected documents marked,

The document shall then be returned to the party who produced it.

and returned.

[1] The Panjáb Chief Court has prescribed such form, *Judicial Circulars*, No. xviii. p. 42. And see the Circular of the Judicial Commissioner of the Central Provinces, No. xiv. of 1881. See also *British Burma Gazette*, Nov. 1887, Part III, p. 149.

[2] Marshall, 127, 135: 11 Suth. Civ. R. 350.

[3] The official copies of the Code have here 'recording to the grounds,' etc.—an obvious misprint or clerical error.

[4] for the purpose of identification. Compare sec. 62. par. 2.

Power to order any document to be impounded.

143. Notwithstanding anything contained in sections 62, 141 and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of document admitted in evidence.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

Return of document before time limited.

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Documents not returned.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Receipt for returned document.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

Framing of issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (*a*) issues of fact, (*b*) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance[1], and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend[2].

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence[3].

147. The Court may frame the issues from all or any of the following materials:— Allegations from which issues may be framed.

(*a*) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons[4];

(*b*) allegations made in the plaint or in the written state-

[1] One party has no power to summon another to give evidence on the settlement of issues, 1 Hyde, 147.

[2] It may be laid down as a general rule that only such averments should be made the subject of issues as are essential to support the cause of action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff. Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment ought not to be made the subject of separate issues, 3 N W. P. 307, per Turner J. There is nothing in the Code which makes the omission by the Judge to settle issues fatal to the trial of the suit, 13 Moo. I. A. 573 (on Act VIII of 1859): 11 Moo. I. A. 25; but such an omission would be a grave irregularity. A direction to ascertain an amount properly payable may be equivalent to an issue, 12 Moo. I. A. 502, 503.

[3] And there is nothing in the Code which requires the Court to allow an issue to be raised on a point of law which the Court considers to be perfectly clear.

The Code nowhere empowers the Judge to try issues of fact with the aid of a jury, 2 N. W. P. 97.

[4] The Court is not bound by the language of the plaint and written statement, 11 Cal. 410.

ments (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(*c*) the contents of documents produced by either party[1].

Court may examine witnesses or documents before framing issues.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Power to amend, add and strike out issues.

149. The Court may at any time before passing a decree amend the issues[2] or frame additional issues[3] on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed[4].

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced[5].

Questions of fact or law may by agreement be stated in form of issue.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing,

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the

[1] As to the proper issues in a suit to establish an easement, when limitation is pleaded, see 6 Cal. 812.

[2] 5 Cal. 64, where Garth C.J. said that the power of amending issues given to the Indian Courts is almost in the same language as the power of amendment given to judges in England by sec. 222 of the C. L. P. Act, 1852, and that a judge is not bound to make such amendments except for the purpose of more effectually putting in issues and trying the real question or questions in controversy.

[3] It should not add an issue or amend the plaint so as to raise a wholly different question to that on which the parties have come into court, 2 Ind. Jur., N. S. 118, per Markby J.

[4] and see the proviso to sec. 53. The power given by these sections is not so extensive as that given in England by the Judicature Act, 7 Bom. 160.

[5] 3 Suth. Civ. R. 147, 150.

parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(*b*) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(*c*) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment[1].

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

[1] 3 Ben. A. C. J. 402.

If parties at issue on questions of law or fact,

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

Court may determine issue, and pronounce judgment.

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object[1].

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown[2], at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further

[1] 1 N. W. P. 147. Otherwise a party might be precluded from offering evidence in proof of his case.

[2] See 7 Suth. Civ. R. 84: 3 Bom. H. C., O. C. J. 55.

hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit[1]. Procedure if parties fail to appear on day fixed.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith[2]. Court may proceed notwithstanding either party fails to produce evidence, etc.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents[3]. Summons to attend to give evidence or produce documents.

[1] It will be remembered that a suit dismissed under chap. VII (sec. 102) may be revived under sec. 103.

[2] 7 Mad. 41, and see 4 Mad. H. C. 56, 254. A decision under sec. 758 can only be altered on appeal or review.

[3] Such summonses are issued as a matter of course (5 Suth. Civ. R. 111), except when they are applied for vexatiously (14 Suth. Civ. R. 66), or their issue would be useless, as where the application is made so late that the witness cannot be reasonably expected to attend in time before the applicant's case closes, 9 Suth. Civ. R. 530.

Expenses of witness paid into court.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned[1], in passing to and from the court in which he is required to attend, and for one day's attendance[2].

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority[3].

Tender of expenses to witness.

161. The sum so paid into court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally[4].

Procedure where insufficient sum paid in.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence;

[1] Compensation for loss of time will be refused, 2 Hyde, 236.

[2] In 5 Suth. Ref. 6, Peacock C.J. laid down that no action for the expenses of a witness will lie.

[3] See *N. W. P. and Oudh Gazette*, 14 Jan., 1882, Part II, p. 45: *Judicial Circular* (Chief Court, Panjáb), No. xviii. p. 42.

[4] That a witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence, see 4 Bom. 619.

or may both order such levy and discharge such person as aforesaid[1].

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy[2]. Time, place and purpose of attendance to be specified in summons.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same. Summons to produce document.

165. Any person present in court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power. Power to require persons in Court to give evidence.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant[3]; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section. Summons how served.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required[4]. Time for serving summons.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Attachment of property of absconding witness.

[1] As to appeals from orders under this section for attachment and sale, see infra, sec. 588, cl. (13).

[2] Suth. 1864, Civ. R. 164.

[3] 6 Suth. Civ. R. 126.

[4] This is in favour of the witness and for enforcing diligence on the party. It does not give the Courts any discretion as to granting or refusing summonses in consideration of their being applied for at a late period, 9 Bom. 310, per West J.

Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons[1], may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion[2], at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

Withdrawal of attachment.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place mentioned therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit[3], having regard to his condition in life and all the circumstances of the case, and may order the property attached,

[1] 6 Suth. Civ. R. 235: 1 ibid. 26.
[2] 8 Suth. Civ. R. 505.
[3] A revival of the repealed Act XIX of 1853, sec. 28.

or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any [1]:

Provided that, if the person whose attendance is required pays into court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Court may of its own accord summon as witnesses strangers to suit.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

173. No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart [2].

Consequences of failure to comply with summons.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

[1] A suit will not lie to set aside a sale under sec. 170, but the claimant may sue the purchaser to establish his right to the property sold.

[2] As to the former law, see 5 Mad. H. C. 132.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section[1].

Procedure when witness apprehended cannot give evidence or produce documents.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Procedure when witness absconds.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the court-house.

Refusal of party to give evidence when called on by Court.

177. If any party to a suit present in Court refuses, without lawful excuse[2], when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit[3].

[1] So probably would the fact that the summons required the witness to attend on Sunday or any other recognised holiday. See 8 Ben. Appx. 12, a case on the Code of Criminal Procedure.

[2] i. e. such an excuse as would in law justify the refusal to give evidence, 1 N. W. P. 242.

[3] 3 Mad. H. C. 299: 4 Mad. H. C. 142. This section is extended (by Act V of 1881, sec. 83) to probate-proceedings before the District Judge. The discretion conferred by it must be exercised with more than usual care, and a caveator's refusal to answer a question does not justify the Judge in dispensing with proof of the will set up and passing a decree in the petitioner's favour, 9 Bom. 241.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

Rules as to witnesses apply to parties summoned.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove[1].

Statement and production of evidence by party having right to begin.

Explanation.—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff[2] and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

180. The other party shall then state his case and produce his evidence (if any)[3].

Statement and production of evidence by other party.

The party beginning is then entitled to reply.

Reply by party beginning.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

[1] The Code does not expressly say that the party beginning shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the Court a second time for the purpose of summing up the evidence. See 1 Mad. H. C. 377.

[2] i. e. all the material allegations in the plaint, 7 C. L. R. 274, cited by O'Kinealy, *Code of Civil Procedure*, 2nd ed. p. 201.

[3] That the Court cannot refuse to hear some of defendant's witnesses on the supposition that it would only go to prove the same facts deposed by his other witnesses previously examined, see 2 Moo. I. A. 427.

Witnesses examined in open court.

181. The evidence of the witnesses in attendance shall be taken orally in open court[1] in the presence, and under the personal direction and superintendence, of the Judge.

How evidence taken in appealable cases.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing[2], in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

When deposition interpreted.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given[3].

Memorandum when evidence not taken down by judge.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes[4], and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

When evidence may be taken in English.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

Any particular question and answer

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any

[1] As to examining in their palanquins *parda* women not claiming exemption under sec. 640, see 1 Ben., Short Notes, v. See, too, 2 Hyde, 88.

[2] See 7 Ben. 74 and 5 Bom. 63 (cases under the Insolvent Act), and 6 Cal. 762.

[3] As to the effect of failing to comply with the requirements of secs. 182, 183, see 6 Cal. 762.

[4] 6 Suth. Civ. R. 112, 113.

objection to any question, if there appear any special reason for so doing.

may be taken down.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Questions objected to and allowed by Court.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Remarks on demeanour of witnesses.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Memorandum of evidence in unappealable cases.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open court.

Every memorandum so made shall form part of the record.

Judge unable to make such memorandum to record reason of his inability.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made[1].

Power to deal with evidence taken down by Judge removed before conclusion of suit.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately,

Power to examine witness immediately.

[1] This section only allows the evidence taken at the hearing before Judge *A* to be used as evidence at the hearing before Judge *B* when Judge *A* has died or been removed: it does not allow the two hearings to be linked together and virtually made one, 7 All. 857: see sec. 199; 8 All. 35, 576. And it does not apply to the case where the suit has been transferred, 4 Bom. H. C., A. C. J. 98.

the Court[1] may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided[1].

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

Court may recall and examine witness.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

CHAPTER XVI.

OF AFFIDAVITS.

Power to order any point to be proved by affidavit.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit[2].

[1] Phear J. held that such evidence cannot be taken by a commissioner, except by consent, 5 Ben. 252. But the Indian Courts are courts of equity, and have, as such, an inherent jurisdiction to issue commissions to take evidence *de bene esse*.

[2] *Blackburn Union* v. *Brooks*, 7 Ch. D. 68. A plaintiff's affidavits in reply need not, apparently, be restricted to cutting down the defendant's evidence, but may be confirmatory of the plaintiff's evidence in chief; see in England, *Peacock* v. *Harper*, 7 Ch. D. 648.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant[1].

Power to order attendance of declarant for cross-examination.

Such attendance shall be in court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

Matters to which affidavits confined.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same[2].

197. In the case of any affidavit under this Code—

Oath of declarant by whom administered.

(*a*) any Court or Magistrate, or

(*b*) any officer whom a High Court may appoint in this behalf, or

(*c*) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf[3],

may administer the oath of the declarant[4].

CHAPTER XVII.

OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken[5] and the parties have been heard either in person or by their respective

Judgment when pronounced.

[1] Order xxxviii. r. 1.

[2] Order xxxviii. r. 3, with the addition in paragraph 1 of the proviso and in paragraph 2 of words in parenthesis.

[3] See *Bombay Government Gazette*, 13 Oct. 1877, Part I, p. 908: *Calcutta Gazette*, 13 July 1881, Part I, p. 720.

[4] The person administering the oath should express the time when and the place where he takes the affidavit (Order xxxviii. r. 5). And when the deponent is illiterate or blind, the person taking the affidavit should certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and made his signature in presence of such person.

[5] 4 Bom. H. C., A. C. J. 102.

pleaders or recognised agents, shall pronounce judgment in open court[1], either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced[2].

200. The judgment shall be written in the language of the Court[3], or in English, or in the Judge's mother-tongue[4].

Language of judgment. Translation of judgment.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Judgment dated and signed.

202. The judgment shall be dated and signed by the Judge in open court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of Small Cause Courts.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Judgments of other Courts.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decisions[5].

Court to state its decision on each issue.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof[6],

[1] But see Marshall, 327, where the Judge, to satisfy himself as to the boundaries of some land in litigation, himself made a local inquiry and pronounced judgment at the spot.

[2] 17 Suth. Civ. R. 475. This shows the intention of the legislature that the case should be heard by one Judge, and that the judgment should be that of the Judge who has heard the case, though it may be delivered by the other, 7 All. 859.

[3] Sec. 645, infra.

[4] That the irregularity of writing a judgment in a wrong language does not invalidate the decision, see 17 Suth. Civ. R. 352.

[5] Reported examples of insufficient judgments will be found in 1 Suth. Civ. R. 295: 2 ibid. 7: 3 ibid. 176, col. 2: 11 ibid. 159: 12 ibid. 254: 15 ibid. 131: Marshall, 332: 5 Mad. H. C. 174: 8 Bom. 368: 2 N. W. P. 109.

That a judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts, see L. R, 3 I. A. 286, per Sir Barnes Peacock.

[6] If the reasons are omitted the finding is not a conclusive finding of fact, binding on a Court of second appeal, 8 Bom. 368.

upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit[1]. Exception.

205. The decree[2] shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree. Date of decree.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit[3]. Contents of decree.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid[4].

If the decree is found to be at variance with the judgment[5], or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties[6], amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment[7]. Power to amend decree.

[1] 10 Cal. 1095, 1097: 4 Mad. 134. The facts which constitute the cause of action should be distinctly stated in the judgment, and not merely a legal conclusion, 2 Sev. 289.

[2] The omission of an express provision that a decree shall follow a judgment was an inadvertency, 5 All. 526.

[3] 6 All. 30.

[4] It is not the usual practice, when costs of an interlocutory proceeding have been disposed of, to consider that an award of the general costs of the suit interferes with the order disposing of those partial costs, L. R., 10 I. A. 116, per Sir A. Hobhouse. Unless interest on costs is specially decreed, or the parties submit to the Court's discretion, such interest cannot be given in execution, L. R., 4 I. A. 137.

For forms of decrees, see infra, Sched. IV, Nos. 127–133.

[5] 7 All. 755.

[6] The application may be made at any time, according to the High Courts at Madras, 10 Mad. 51, and Bombay, 11 Bom. 284. But the Allahabad High Court has held that it must be made within three years, 4 All. 23.

[7] 6 Cal. 22: 7 All. 875, 876. The amendment can be made even after the decree has been approved by the appellate Court, 9 Mad. 354. Whether under sec. 622 the High Court can revise such amendments, see 7 All. 276, 875. An order refusing to amend can be revised under that section, 6 All. 125. Sec. 206 gives no power to alter or vary the decree, or to correct errors arising from accidental slips or omissions; this can only be done on a review of judgment or an appeal, 2 All. 505. Section 206

Decree for recovery of immoveable property.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers [1].

Decree for delivery of moveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had [2].

In suits for money, decree may order certain interest to be paid on principal sum adjudged.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable [3] to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit [4].

Decree may order payment by instalments.

210. In all decrees for the payment of money [5], the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest [6].

Order, after de-

And after the passing of any such decree the Court may, on the application of the judgment-debtor [7] and with the

would not enable the Court, where the decree omitted to provide for the costs of an interlocutory proceeding, to rectify the omission. Nor could it antedate or postdate a judgment by consent: otherwise in England under Orders xxviii. r. 11; and xli. r. 3.

[1] Even where there is no such identification, the decree should specify the boundaries, 23 Suth. Civ. R. 285: 25 ibid. 39: but see 10 ibid. 96.

[2] 16 Suth. Civ. R. 240: 19 ibid. 123.

[3] 6 N. W. P. 359: 12 Ben. 477 (75 per cent. per annum!). For cases where interest was refused as amounting to a penalty, see 11 Ben. 135: 9 Cal. 615: 7 N. W. P. 108. Where the plaintiff is a Hindú and the interest exceeds the principal, see 1 Mad. H. C. 5: 3 Bom. H. C., A. C. S. 23. But in the Bengal Mufassal, see 24 Suth. Civ. R. 106: 9 Cal. 825, 871: 14 Cal. 781. As to *dámdupát* in Bombay, see 3 Bom. 131, 132, and supra, vol. i. p. 564, n. 1.

[4] 12 Cal. 569.

[5] This does not include decrees in which a sale of land is ordered in pursuance of a contract specifically affecting the property, 2 All. 129, 320, or in which a lien is enforced on a *nankar*-annuity, 2 All. 649.

[6] But the Court cannot order that the amount of a decree shall not be paid until the expiration of a fixed time from its date, 2 All. 649, where the headnote is wrong.

[7] within six months from the date of the decree, Limitation Act, art. 175.

consent[1] of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

cree, for payment by instalments.

Save as provided in this section and section 206, no decree shall be altered at the request of parties[2].

211. When the suit is for the recovery of possession of immoveable property[3] yielding rent or other profit, the Court[4] may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree[5] (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

In suits for land, Court may decree payment of mesne profits with interest.

Explanation.—'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits[6].

212. When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

Court may determine amount of mesne profits prior to suit, or may reserve inquiry.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order[7] such accounts

Administration-suit.

[1] 2 All. 481: 7 Mad. 152.

[2] Sec. 210 confers no authority on the Court to relieve a bond-debtor from a stipulation for the payment of the whole debt on failure to pay punctually any instalment, 4 Bom. 96.

[3] 9 Bom. H. C. 7.

[4] i. e. the Court trying the case. An ámín, 21 Suth. Civ. R. 269, or the Court executing the decree (25 ibid. 270), cannot assess mesne profits.

[5] The limit of three years was inserted with a view to ensure speedy execution of such decrees.

[6] 8 Suth. Civ. R. 104, per Hobhouse J.: 1 Agra Misc. App. 17.

[7] An order directing an account was formerly unappealable, 9 Cal. 773. But now it is a 'decree,' supra, p. 467. For a form see infra, Sched. IV. Nos. 130, 131.

and inquiries to be taken and made, and give such other directions, as it thinks fit[1].

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured[2] and unsecured[3] creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent[4];

and all persons who in any such case would be entitled to to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code[5].

Suit to enforce right of pre-emption.

214. When the suit is to enforce a right of pre-emption[6] in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid[7], and shall declare that on payment of such purchase-money, together with the cost (if any) decreed against[8] him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs[9].

[1] When the Court orders under this section a sale of any property vested in an executor, administrator or trustee, he should have the conduct of the sale, unless the Court directs otherwise (Order l. r. 10).

[2] *Ex parte Joselyne*, 8 Ch. D. 327.

[3] *Ex parte Nelson*, 14 Ch. D. 41.

[4] This and the following paragraph are taken from 38 & 39 Vic. c. 77, sec. 10. The effect is that a secured creditor can only prove for the balance after realising or valuing his security, *Re Withernsea Brick Works*, 16 Ch. Div. 337, 343, per Lush J.

[5] The rest of this section was repealed by Act IV of 1886.

[6] See as to this in the Lower Provinces, 6 Suth. Civ. R. 250: 15 ibid. 455: 20 ibid. 216: 4 Cal. 831, and in the N. W. Provinces, 2 N. W. P. 222: 5 All. 180: 7 All. 107.

[7] 2 All. 744. If the Court is closed when the time for making the payment expires, the payment, if made on the day when the Court next re-opens, will be deemed to be made within time, 2 N. W. P. 112: 7 All. 107.

[8] Where costs are awarded in favour of the preemptor he may, when depositing the purchase-money under the decree, deduct therefrom such costs, 6 All. 352.

[9] As to the form of the decree in cases where rival pre-emptors possessing equal rights of pre-emption come forward to enforce the right in respect

215. When the suit is for the dissolution of a partnership [1], the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit [2].

Suit for dissolution of partnership.

215 A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order [3] directing such accounts to be taken as it thinks fit.

Suit for account between principal and agent.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed [4], the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Effect of decree as to sum awarded to defendant.

217. Certified copies [5] of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Certified copies of judgment and decree.

of the same sale, and in cases where one of two rival pre-emptors possesses a right of pre-emption superior to that of the other, see 6 All. 370. That a suit for pre-emption must include the whole of the pre-emptional property, see 6 All. 423, 455.

[1] See Sched. IV. Nos. 113, 132, 133.

[2] 5 All. 500: 7 All. 227.

[3] Such an order is a 'decree' (supra, p. 467), and therefore appealable.

[4] 25 Suth. Civ. R. 275.

[5] not merely translations, 1 Bom. H. C. 165.

CHAPTER XVIII.

OF COSTS.

Costs of applications.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application [1], or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs to be paid.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit [2], and whether in whole or in what part or proportion [3].

Power of Court as to costs.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit [4], and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power.

Provided that, if the Court directs that the costs of any application or suit shall not follow the event [5], the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

[1] The interlocutory order giving these costs is not affected by the general award of costs of the suit, 9 Cal. 797.

[2] Persons, therefore, not parties to the record cannot be subject to such an order, 7 Bom. 486, per Scott J. And the Court cannot e. g. declare that the costs shall be paid by the unsuccessful party in a future suit, 23 Suth. Civ. R. 89.

[3] As e. g. where a plaintiff, claiming in respect of two distinct matters, succeeds as to one and fails as to the other, Marshall, 79.

[4] But see supra, sec. 123, and infra, secs. 111, 379, par. 1, which to some extent limit this discretionary power. And the discretion must be exercised on fixed principles. Thus a successful appellant is, as a rule, entitled to his costs, 3 Cal. 473, 484: *Exp. Masters*, 1 Ch. Div. 113, and it may be said, generally, that where a party successfully enforces a legal right and is guilty of no misconduct, then (subject to sec. 22 of the Presidency Small Cause Courts Act, XV of 1882) he is entitled to costs, see *Cooper* v. *Whittingham*, 15 Ch. Div. 501. So, as a rule, is the mortgagee in a redemption suit, 8 Bom. 190. So is a party who has no interest in the suit (2 Suth. Civ. R. 33: 12 ibid. 444), or has not opposed the plaintiff's claim (3 ibid. 23), or disclaims (11 ibid. 48).

As to appeals from orders awarding costs, see 8 Cal. 91: 11 Cal. 359: 8 Bom. 368. In England such an order is appealable only when made on a wrong principle, or when the costs are part of the relief to which a party is entitled, Daniell, 6th ed., 1274-5.

[5] i.e. the result of the whole litigation, *Waring* v. *Pearman*, 32 W. R. 429, and see *Garnet* v. *Bradley*, 3 App. Ca. 950.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter [1].

Costs may be set-off against sum admitted or found due.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

Interest on costs. Payment of costs out of subject-matter.

CHAPTER XIX.

OF THE EXECUTION OF DECREES [2].

A.—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed it [3] or by the Court to which it is sent for execution under the provisions hereinafter contained.

Court by which decree may be executed.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court [4], or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree [3] sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it [5], or

[1] But it has been held in England that a defendant cannot enforce contribution for costs against a co-defendant, *Dearsley* v. *Middleweek*, 18 Ch. D. 236. In India see and consider 9 Suth. Civ. R. 300.

[2] The rules contained in this chapter apply also to the execution of any process for arrest, sale, or payment, which may be ordered by a civil court in any civil proceedings, sec. 649 infra.

[3] Where that Court ceases to exist or to have jurisdiction, see infra, sec. 649, para. 2, and 6 Cal. 513.

[4] See sec. 17 (*b*) supra, p. 479.

[5] 6 Cal. 519.

(*d*) if the Court which passed the decree[1] considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree[1] may of its own motion send it for execution to any Court subordinate thereto[2].

The Court to which a decree is sent under this section for execution shall certify[3] to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognisable by a Court of Small Causes and the Court which passed it[1] wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (*a*), (*b*), and (*c*) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

(*a*) a copy of the decree;

(*b*) a certificate[4] setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed[5], or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

[1] See p. 547, note 3.

[2] A munsif's Court may execute a decree in a suit beyond its ordinary jurisdiction which has been transferred to it for execution by a District Court, Mad. 397.

[3] As to recalling the proceedings before the return of the certificate, see 6 Cal. 504.

[4] See form, Sched. IV. No. 134.

[5] When this Court has ceased to exist, or to have jurisdiction to execute the decree, see infra, sec. 649, par. 2.

(*c*) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Court receiving copies of decree etc. to file same without proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court[1] which it directs to execute the same.

Execution of decree or order by Court to which it is sent.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Execution by High Court of decree transmitted.

228. The Court[2] executing a decree sent to it under this chapter shall have the same powers in executing[3] such decree as if it had been passed by itself[4]. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of Court in executing transmitted decree.

Appeal from its orders.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State[5], which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India[6].

Decrees of Courts established by Government of India in foreign States.

[1] That a Court of Small Causes is 'subordinate' to the District Court, see sec. 2 supra.

[2] Its powers under this section are confined to the execution of the decree, 6 Ben. Appxx. 66. It cannot question the propriety or correctness of the order directing execution, nor can it stay execution except temporarily under sec. 239, 7 All. 333.

[3] But it cannot send on the decree to a *third* court for execution, except as provided by sec. 226; see 3 Cal. 512.

[4] It can, e. g. determine whether execution is barred, 5 Cal. 897.

[5] See *Bombay Government Gazette*, 18 March, 1880, Part I, pp. 290, 291.

[6] 4 Ben. A. C. J. 134.

B.—Of Application for Execution.

Application for execution.

230. When the holder of a decree desires to enforce it[1], he[2] shall apply[3] to the Court which passed the decree[4] or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor[5].

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted[6], no subsequent application to execute the same decree shall be granted after the expiration of twelve years[7] from any of the following dates (namely):—

(*a*) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money[8], or the delivery of any property, to be made at a certain date[9]—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years[10], where the judgment-debtor by fraud[11] or force prevented the execution of the decree at

[1] As to applying for execution of a portion of a decree which is perfect for execution in some respects, and imperfect in others, see 3 Ben. 114, 118, per Peacock C.J.

[2] 4 Cal. 605: 7 All. 107.

[3] under sec. 235; see 3 Cal. 235.

[4] See p. 548, note 5.

[5] 8 Suth. Civ. R. 282.

[6] i.e. found to be made regularly and formally 'admitted' (sec. 245), 8 Cal. 297, and see 6 Mad. 173.

[7] This limitation applies to the subsequent application, not to the order passed thereon, 6 Mad. 361.

[8] 4 All. 155.

[9] i.e. an actual specified date, not merely monthly or annually, 7 Mad. 84.

[10] i.e. an application for execution made after the expiration etc., 6 Mad. 361.

[11] 4 Mad. 292. Here the word 'fraud' has a sense wider than that in which it is generally used in English law, 6 Mad. 376, per Innes J., citing Labeo's definition of dolus malus: 'Omnis calliditas, fallacia, machinatio ad circumveniendum, fallendum, decipiendum alterum adhibita,' Dig. iv. 3, 1. Where the judgment-debtor, on seeing the bailiff approach

some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force[1] immediately before the passing of this Code[2] shall have expired before the completion of the said three years[3].

Application by joint decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all[4], or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased[5].

If the Court sees sufficient cause[6] for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application[7].

Application by transferee of decree.

232. If a decree be transferred by assignment in writing[8] or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it[9]; and, if that Court thinks fit[10], the decree

his house to attach his property, left the verandah, went inside the house, chained the door and refused to open it, his conduct was held to be a fraudulent prevention within the meaning of this section, 9 Bom. 318.

[1] 9 Mad. 454. This section does not apply to decrees by the High Courts, 6 Bom. 258.

[2] 7 Bom. 214.

[3] 6 All. 388: 12 Cal. 559, dissenting from 6 All. 189; and see 8 All. 419, 536.

[4] But see 6 All. 69, where the execution was conditional on all the decree-holders joining in a conveyance to the judgment-debtor. That the execution of a joint decree cannot be taken out in part, see 5 All. 31, following 3 Ben. A. C. J. 114, per Peacock C.J. But see 9 Cal. 482: That one joint decree-holder, by foregoing his right to execute the decree, cannot deprive another of his right to execute, see 5 N. W. P. 16.

[5] 1 Ben. A. C. J. 62. If the representative of a deceased decree-holder wishes to take out execution he should get his name substituted on the record (sec. 363), or take out administration under the Succession Act or Act V of 1881, or a certificate under Act XXVII of 1860.

[6] 21 Suth. Civ. R. 32. No appeal lies from an order refusing to allow one of several joint decree-holders to execute.

[7] 1 Ben. A. C. J. 28.

[8] The transferee under an oral assignment is not entitled as of right to execution, 9 Bom. 179, 181.

[9] not to the Court (if any) to which it has been sent for execution, 5 Ben. 497: 9 Bom. H. C. 46, 49.

[10] 4 Ben. A. C. J. 200. The pro-

may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder[1]:

Provided as follows:—

(*a*) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(*b*) where a decree for money against several persons[2] has been transferred to one of them, it shall not be executed against the others[3].

Transferee to hold subject to equities.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Application against judgment-debtor's representative.

234. If a judgment-debtor dies before the decree has been fully executed[4], the holder of the decree may apply to the Court which passed it to execute the same against the legal representative[5] of the deceased.

bability of the decree being executed against one of several judgment-debtors is no ground for refusing the application of the purchaser of the decree who seeks to execute it against another judgment-debtor, 8 Mad. 455.

[1] 9 Bom. 179: 11 Bom. 153. There is no appeal from orders under this section allowing or refusing execution, 3 Cal. 371, 708; but the transferee may sue for a declaration that the transfer is valid, and entitles him to execute the decree, 7 All. 457, 459. An order disallowing the judgment-debtor's objection to the assignee of the decree taking out execution is a decree and appealable, 1 All. 668: 2 All. 91.

[2] i.e. a decree for money personally due by two or more persons, 11 Cal. 393.

[3] 9 Suth. Civ. R. 232, per Peacock C.J. The reason is because when one of the persons jointly liable under a decree unites in himself the characters of creditor and joint debtor in respect of the whole decretal debt, the effect is to extinguish the liability of all the cojudgment-debtors under the decree. The transferee's remedy is a suit for contribution, 9 Suth. Civ. R. 232. But where only a share of the decree-holder's rights is transferred to one of the cojudgment-debtors, the effect is to extinguish only so much of the judgment-debt as he has so acquired; and application for execution may be made in respect of the whole unextinguished portion, 5 All. 27, 33, 34.

[4] and after the decree has been made, 14 Ben. 335, note.

[5] 3 Cal. 708: 4 Cal. 908: 8 Bom. 241, 255. A Hindú widow may be the 'legal representative' of her deceased husband within the meaning of this section, 6 Cal. 479. No appeal lies by the person placed on the record as legal representative, 3 Cal. 709. But see 2 Cal. 334 (suit); 5 Cal. 86 (injunction): 3 Cal. 708 (revision).

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of[1]; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder[2], compel the said representative to produce such accounts as it thinks fit.

Contents of application.

235. The application for the execution of a decree shall be in writing[3], verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely):—

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree[4];

(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree[5];

(*f*) whether any and what previous applications have been made for execution of the decree and with what result;

(*g*) the amount of the debt[6] or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

[1] In the case of a Hindú's undivided family the share of a deceased father passes by survivorship to the sons, and is not assets in their hands for the purposes of this section, 5 Mad. 223, 225, 235; unless it has been attached before his death, and thus brought under the control of the Court for the satisfaction of the decree, 5 Mad. 233.

[2] i.e. 'the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has by order recognised as the decree-holder from the original plaintiff or his representatives,' 2 Mad. 217.

[3] But see infra, sec. 256.

[4] 14 Suth. Civ. R. 205.

[5] This puts on the party applying for execution the obligation of stating any adjustment between the parties after decree, that is, any matter not done through the Court, as well as any agreement through the Court, 2 Mad. 216. See infra, sec. 258.

[6] 4 Mad. 219, where there had been a decree declaring certain parties entitled to a constantly recurring right to receive certain amounts of sacred rice, and the Court held that the decree-holders would not, on each application for execution, be able to state definitely to what extent relief was required.

(*h*) the amount of costs, if any, awarded;

(*i*) the name of the person against whom the enforcement of the decree is sought [1]; and

(*j*) the mode in which the assistance of the Court is required [2], whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require [3].

Inventory to accompany application for attachment of moveable property.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession [4], the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same [5].

Further particulars when application is for attachment of immoveable property.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it [6], and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints [7].

When application must be accompanied by extract from Collector's register.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors [8].

[1] 18 Suth. Civ. R. 56: 24 ibid. 3.

[2] 7 N. W. P. 79.

[3] i. e. the mode of execution is to be adapted in each case to the nature of the particular relief sought to be enforced under the decree, 1 Hyde, 158.

[4] See infra, secs. 268 and 272.

[5] This inventory must, when the property is moveable, be delivered into Court along with the application under sec. 235, 7 Cal. 559.

[6] 12 Suth. Civ. R. 488: 18 ibid. 411: 7 Mad. 107.

[7] See note 5.

[8] 11 Suth. Civ. R. 175: 16 ibid. 149.

C.—Of staying Execution.

239. The Court to which a decree has been sent for execution under this chapter[1] shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time[2], to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction[3] in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto[4];

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

When Court may stay execution.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from judgment-debtor.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution[5].

Liability of judgment-debtor to be retaken.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution[6].

Order of Court which passed decree binds Court applied to.

[1] Sec. 223.

[2] 7 All. 330: 8 Cal. 918.

[3] 3 N. W. P. 168.

[4] 5 Cal. 736: 8 Cal. 918. This section alleviates any hardship that might result from the realisation, by simultaneous executions in more than one district, of more than the amount decreed, 8 Cal 690.

[5] Compare sec. 341 infra.

[6] But see sec. 228 supra. The Court to which a decree is sent for execution must not try whether the Court which passed the decree had jurisdiction to make it or not. A contrary rule would virtually subject the decrees of the Civil Courts to revision and reversal by Courts to

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution[1] on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided[2].

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

244. The following questions shall be determined by order of the Court executing a decree[3] and not by separate suit[4] (namely)—

(*a*) questions regarding the amount of any mesne profits as to which the decree has directed inquiry[5];

(*b*) questions regarding the amount of any mesne profits or interest[6] which the decree has made payable[7] in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree[8];

(*c*) any other questions[9] arising[10] between the parties[11] to the suit[12] in which the decree was passed, or their representatives[13],

which they are not subordinate, 7 Bom. 483. And it cannot refuse execution because the property decreed to be sold is unsaleable, 8 Bom. 185.

[1] No appeal lies from an order under this section, 9 Cal. 214. Secus, 7 Cal. 733. See 11 Bom. H. C. 151.

[2] 6 N. W. P. 181. But see 7 Cal. 733.

[3] i.e. the Court executing the decree at the time when the application is made: not the Court which has executed the decree and thereby become *functus officio*, 10 Cal. 540.

[4] 6 Bom. 8, 148: 9 Bom. 458, 469: 7 All. 549. This bars suits on the judgments of British Indian Courts. As to suits on the judgments of foreign and Native Courts, see supra, p. 393, and sec. 14.

[5] See sec. 212 supra.

[6] Sec. 209 supra.

[7] Sec. 211 supra, and cf. L. R., 2 I. A. 219.

[8] Sec. 211.

[9] 20 Suth. Civ. R. 162.

[10] i.e. directly arising, 7 All. 174, per Duthoit J. Questions as to the construction of the decree are questions relating to its execution, 9 Cal. 873.

[11] See 11 Ben. 149, and 4 Bom. H. C. 119 (judgment-debtor's sureties for performance of decree).

[12] 6 Bom. 590: but not between parties to the decree (8 Mad. 477) or co-decree-holders, 5 Cal. 593. The object is to put a limit to litigation and to prevent one suit growing out of another, 5 Mad. 218–19.

[13] i. e. heirs, devisees, executors, or administrators, 5 All. 97, 456: 8 All. 632: 7 Cal. 403: 12 Cal. 458: 3 Mad. 363. The official assignee is not a 'representative' of the judgment-debtor within the meaning of this section, 7 All. 752. Nor, of course, is the purchaser of the plaintiff's interest not on the record, 21 Cal. 151.

and relating to the execution[1], discharge or satisfaction of the decree[2].

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree[3].

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application[4] for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected[5].

Every amendment made under this section shall be attested by the signature of the Judge.

[1] 4 All. 420: 8 All. 146: 8 Cal. 477: 9 Cal. 872: 10 Cal. 411: 5 Bom. 45: 6 Bom. 148: 9 Bom. 468: 5 Mad. 217. In execution-proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds where they find that it is substantially right, L. R., 6 I. A. 233.

[2] 7 Cal. 733: 7 Mad. 255: 8 Mad. 473: 10 Mad. 117: 5 All. 212: 6 All. 393, 448: 9 All. 229: 10 Bom. 155. An order directing accounts is not in the nature of a final decree and was therefore not an appealable order under the corresponding section of the Code of 1877, 9 Cal. 773. But the definition of a decree in the present Code expressly includes such orders. An order granting an application for the sale of certain property, to satisfy a sum which, in the course of certain execution proceedings has been found due to the applicant for mesne profits, is not appealable, 5 Cal. 50. Orders determining questions mentioned or referred to in this section and not specified in sec. 588 are 'decrees,' see the definition, p. 467, supra, and are appealable.

[3] and were not claimed in the plaint: see sec. 13, expl. III, supra. A Court whose decree for possession of land has been reversed can order the land to be restored with the mesne profits accrued during such possession, 14 Cal. 484. And where the decree under which an execution sale has taken place is reversed, sec. 244 does not bar a suit for the purchase money, 13 Cal. 326.

[4] As to the stamp see the Court Fees Act, infra, sched. II. art. 1. As to limitation, see sec. 230 supra, and Act XV of 1877, sched. II. art. 179.

[5] 8 Cal. 479: 14 Cal. 124. An appeal lies from orders rejecting applications under this section, see sec. 588, cl. (11).

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register[1] of the suit a note of the application and the date on which it was made, and shall order[2] execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Cross-decrees.

246. If cross-decrees between the same parties[3] for the payment of money be produced[4] to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum[5].

If the two sums be equal, satisfaction shall be entered up on both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time[6] and by the same Court[7].

Explanation II.—This section applies where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III. This section does not apply unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

[1] Sec. 58 supra.

[2] 8 Suth. Civ. R. 283: 19 ibid. 132: 8 Ben. 255; but see sec. 230, para. 2, and sec. 256.

[3] This section does not apply to cross-claims under the same decree, 5 All. 273. When *A* obtained a decree against *C*, and *C* obtained a decree against *A* and *B*, *C* could, if he chose, execute the second decree for the whole amount as against *A*. He is therefore equally entitled to execute in another way, i.e. by setting off the amount thereof as against *A*'s decree, 9 Cal. 480, 481, following *Mitchell* v. *Oldfield*, 4 T. R. 123.

[4] Ben. F. B. 503.

[5] The execution-purchaser need not inquire whether the judgment-debtor had a cross-judgment of higher amount, such as would have rendered the order for execution incorrect, L. R., 13 Ind. App. 10: 614 Cal. 18.

[6] 7 Suth. Civ. R. 535.

[7] 3 N. W. P. 104. See 1 Ben. F. B. 23.

Illustrations.

(*a*) *A* holds a decree against *B* for Rs. 1,000. *B* holds a decree against *A* for the payment of Rs. 1,000 in case *A* fails to deliver certain goods at a future day. *B* cannot treat his decree as a cross-decree under this section.

(*b*) *A* and *B*, co-plaintiffs, obtain a decree for Rs. 1,000 against *C*, and *C* obtains a decree for Rs. 1,000 against *B*. *C* cannot treat his decree as a cross-decree under this section[1].

(*c*) *A* obtains a decree against *B* for Rs. 1,000. *C*, who is a trustee for *B*, obtains a decree on behalf of *B* against *A* for Rs. 1,000. *B* cannot treat *C*'s decree as a cross-decree under this section.

Cross-claims under same decree.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree[2].

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed.

248. The Court shall issue a notice[3] to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(*a*) if more than one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made[4]:

Proviso.

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be

[1] Because *C*'s liability under the decree obtained by *A* and *B* is a liability, not to *B* only, who is *C*'s debtor under the second decree, but to *B* and another person *A*, 9 Cal. 480, per Field J.

[2] 13 Suth. Civ. R. 106. The two parties must hold the same character, and possess identical rights of enforcing execution; and enforcement of the decree will be refused, or satisfaction entered up, only when this is the case, 5 All. 273, 274.

[3] See form, Sched. IV, no. 135. The notice must be served as a summons, sec. 94, i. e. as provided by secs. 72-92. As to the presumption that the notice has been issued, see the Evidence Act, sec. 114, and 22 Suth. Civ. R. 5.

[4] See sec. 234 supra.

executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application[1] for execution against the same person the Court has ordered execution to issue against him[2].

Explanation.—In this section the phrase 'the Court' means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure after issue of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed[3].

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit[4].

Warrant when to issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary[5], shall issue its warrant for the execution of the decree.

Date, signature, seal and delivery.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall

[1] 23 Suth. Civ. R. 32.

[2] Omission to give, on applying for execution, the notice required by this section affects the regularity of the execution-sale and the validity of all the execution-proceedings, 3 All. 424, following 6 Cal. 103.

[3] See 14 Ben. 330.

[4] As to the procedure in such case, see 5 Ben. Appx. 65, per Jackson J.

[5] As, for example, where there are cross-decrees (sec. 246), or the decree-holder dies while execution-proceedings are pending (sec. 243). The Code does not empower a Court of first instance to refuse to execute a decree against which no appeal has been preferred, and the time for appealing against which has expired, 10 Cal. 819.

return it with such endorsement to the Court from which it issued[1].

252. If the decree be against a party as the legal representative[2] of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property[3]:

Decree against representative for money to be paid out of deceased's property.

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally[4].

253. Whenever a person has, before[5] the passing of a decree in an original suit, become liable as surety for the performance of the same[6] or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Decree against surety.

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety[7].

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative[8] to some other relief granted by the decree or order, or otherwise[9], may be enforced by the imprisonment of the judgment-debtor[10] or by the attachment[11] and sale of his property in manner hereinafter provided, or by both.

Decree for money.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently

Decree for amount to be subse-

[1] 10 Cal. 18. And see supra, sec. 223.

[2] 4 Cal. 342.

[3] as passed to the representative, 3 Ben. F. B. 314, per Peacock C.J.

[4] As to execution against a representative, see 12 Suth. Civ. R. 517: 14 ibid. 362.

[5] 7 Mad. 284, 287: 3 All. 809.

[6] 3 N. W. P. 88.

[7] 2 All. 604: 8 All. 639. The decree-holder has also, of course his remedy on the surety-bond, 6 N. W. P. 261.

[8] Sec. 208.

[9] e. g. as interest on the amount decreed or on the costs, sec. 209.

[10] This includes a pardanashín woman, 1 Ben. F. B. R. 31. The Code contemplates only one arrest. A judgment-creditor once arrested and imprisoned in execution of a decree cannot be again arrested under a fresh writ on the same decree, 12 Cal. 657.

[11] See form of warrant of attachment, Sched. IV, no. 136.

quently ascertained.

determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money[1].

Power to direct immediate execution of decree for money not exceeding rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person[2] of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property[3] within the same limits[4].

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

(*a*) into the Court whose duty it is to execute the decree; or

(*b*) out of Court to the decree-holder; or

(*c*) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor.

257 A. Every agreement to give time for the satisfaction of a judgment-debt[5] shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable[6].

Agreement for satisfaction of judgment-debt.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction[7].

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt;

[1] 8 Suth. Civ. R. 9, and see ibid. 42.

[2] This provision is unaffected by sec. 642, par. 2.

[3] See the General Clauses Act, s. 2, cl. 6, supra, vol. i. p. 488, and 8 Ben. 508.

[4] There cannot be, under this section, simultaneous executions against both person and property.

[5] i.e. every agreement between a judgment-debtor and a judgment-creditor for extending the time for enforcing the decree by execution. This section is not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments or otherwise, 11 Cal. 671.

[6] 8 Bom. 538: 5 All. 492.

[7] 1 Bom. 538: 9 Bom. 178. This section applies only as between parties to the suit and decree, 6 Mad. 101. When the agreement is made with the sanction of the Court, the decree may be executed in accordance with its provisions, 5 All. 492, 596.

and the surplus, if any, shall be recoverable by the judgment-debtor.

258. If any money payable under a decree[1] is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257 A, the decree-holder[2] shall certify such payment or adjustment to the Court whose duty it is to execute the decree[3]. Payment to decree-holder.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply[4] to the Court to issue a notice to the decree-holder to show cause[5], on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognised by any Court[6] unless it has been certified as aforesaid[7].

259. If the decree be for any specific moveable[8], or for any share in a specific moveable, or for the recovery of a wife, it Decrees for specific moveables,

[1] i.e. an existing decree, 5 Bom. H.C., A.C.J. 78.

[2] Where there are more decree-holders than one, this means 'all the decree-holders' (Act I of 1868, s. 2, cl. 2), 9 Cal. 835. As to the application for a certificate of part-payment, see 5 Cal. 448.

[3] What this means is, that the judgment-creditor must go to the Court and say, 'My decree has been adjusted and extinguished: strike off the case,' 7 All. 431.

[4] within 20 days, Act XV of 1877, sched. II, art. 161; which seems too short a time: see 6 Bom. 146.

[5] i.e. to allege and prove to the satisfaction of the Court, 11 Cal. 168.

[6] The High Courts at Calcutta and Allahabad hold that this means, any Court *executing the decree*, not any Court hearing a suit for money paid to a judgment-creditor out of court and not certified, 9 Cal. 790 and 10 Cal. 356: 3 All 533, 539: 7 All. 128, 129. But the High Court of Bombay (6 Bom. 146, 10 Bom. 155) holds that such suits are barred; and where the judgment-debtor, pursuant to a non-certified compromise, executed a bond in satisfaction of the debt, that Court held the bond to be without consideration, 8 Bom. 300.

[7] This section refers to any decree, 6 Cal. 788. It does not bar a suit for damages for breach of a contract to certify satisfaction of a decree, 8 Mad. 277: and see 9 Mad. 101.

[8] See the Specific Relief Act, I of 1877, s. 11, supra, vol. i. p. 951.

or recovery of wives.

may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

Decree for specific performance or restitution of conjugal rights.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights[1], or for the performance of or abstention from any other particular act[2], has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it[3], the

[1] As to these decrees in case of Hindús, see 1 Bom. 164: 14 Ben. 298: 6 Suth. Civ. R. 105: 8 ibid. 467: 23 ibid. 22, col. 1: 2 Agra Civ. C. App. 112: 8 All. 78: 5 Bom. H. C., A. C. J. 209 (leprosy). In a very recent case Pinhey J. refused to compel a Hindú woman to cohabit with a husband to whom she had been married when she was eleven years old, and with whom she had never lived, 9 Bom. 529, and see 1 Ind. Jur. N.S. 307. But this decision has been reversed on appeal. In England disobedience to an order for restitution of conjugal rights is no longer punishable by attachment, but is a ground for judicial separation, or, in the case of an adulterous husband, of dissolution of marriage, 47 & 48 Vic. c. 68. s. 5. As to decrees for restitution etc. in the case of Parsís, see Act XV of 1865, sec. 36: 9 Bom. H. C. 290: in the case of Muhammadans, 11 Moore I. A. 551: 8 All. 149.

[2] A decree declaring a party entitled to a constantly recurring right to receive certain payments in kind, valued at a certain annual sum, cannot be executed under the Code, 4 Mad. 219.

[3] 1 All. 501.

decree may be enforced by his imprisonment, or by the attachment of his property, or by both[1].

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

Decree for execution of conveyances, or endorsement of negotiable instruments.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the

[1] It cannot be enforced by directing the názir to carry out a mandatory injunction by (e.g.) pulling down a wall, 8 Cal. 174.

Court shall thereupon pass such order[1] as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Form and effect of execution of conveyance by Court.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form, '*C. D.*, Judge of the Court of (*or as the case may be*), for *A. B.*, in a suit by *E. F.*, against *A. B.*,' or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same[2].

Decree for immoveable property.

263. If the decree be for the delivery of any immoveable property[3], possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property[4].

Delivery of immoveable property when in occupancy of tenant.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property[5], and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in

[1] Such orders are appealable to the High Court, sec. 588, cl. (15), sec. 589.

[2] That an assignment, by endorsement signed by the Judge, of a mortgage for more than rs. 100 requires registration, see 2 All. 392.

[3] This would not include an order for foreclosure absolute, *Wood* v. *Wheater*, 22 Ch. D. 281. Section 263 relates only to the delivery of immediate possession. When the property is in the occupation of a tenant, etc., see sec. 264.

[4] This power to remove would, where the property is a house, probably include the right to break the door, 7 Bom. H. C., Cr. Ca. 85.

For a form of warrant to give possession, etc., see sched. IV, no. 137.

[5] When this was not done, see 15 Suth. Civ. R. 99.

writing containing such substance shall be served upon him, and in such case no proclamation need be made[1].

Partition of estate or separation of share.

265. If the decree be for the partition[2] or for the separate possession of a share of an undivided estate paying revenue to Government, the partition[2] of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition[2], or the separate possession of shares, of such estates[3].

F.—Of Attachment of Property.

Property liable to attachment and sale in execution of decree.

266. The following property is liable to attachment and sale in execution of a decree, (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundís, promissory-notes, Government-securities, bonds or other securities for money, debts[4], shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable[5] property[6], moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own

[1] If the decree-holder does not choose to put in motion this power, and contents himself with a mere formal order declaring his possession, but giving him no actual possession, it seems that (notwithstanding secs. 13 and 244) he may sue for ejectment, 11 Cal. 93.

[2] 'partition' here includes the delivery of the shares to their respective allottees, 11 Bom. 662.

[3] 8 Bom. 539. This section does not apply to raiyatwárí land, but to permanently settled estates, 6 Mad. 97, confirmed in 7 Mad. 382. As to the meaning of 'estate' in the N. W. Provinces, see 6 All. 452; in the Lower Provinces, 7 Cal. 153: 10 Cal. 436, 440. As to executing decrees in partition-cases, see 3 Cal. 514 and 551: 7 Cal. 153.

[4] 'Debts' here means claims other than judgment-debts [as to these see sec. 273 and 6 Mad. 419], over which the Courts of British India have jurisdiction. It does not include debts due to a British subject by a foreign government or a subject of a foreign government, 5 Bom. 249.

[5] Where the decree expressly directs certain property to be sold, its saleability cannot be questioned in execution, 8 Bom. 187.

[6] That a decree for money may be attached, see 7 Ben. 318. So can a right to redeem, 5 Ben. 380, unless the person applying for attachment is the mortgagee, 5 Ben. 450: 1 Cal. 337. And see 7 Mad. 315 (share of land in Malabar devised with a clause that it should be held impartible), and 7 Ben. A. C. J. 159 (house built and occupied with permission of owner of land for forty years).

benefit[1], and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, (namely)—

(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children[2];

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court[3] be necessary to enable him to earn his livelihood as such;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists[4];

(*d*) books of account[5];

(*e*) mere rights to sue for damages[6];

(*f*) any right of personal service[7];

[1] A member of an undivided Hindú family may, in the Bombay Presidency, alienate for valuable consideration his share in the undivided property. Such share may therefore be taken in execution for his debt, 10 Bom. H. C., 139; and see 4 Cal. 723: L. R., 4 I. A. 247: 4 Cal. 809. But land assigned to a Hindú widow with a proviso against alienation could not be attached and sold in execution of a money-decree against her, 10 Bom. 604.

[2] 9 Bom. H. C. 272. The *mangalasūtra*, or neck-ornament worn by a Hindú married woman during her husband's lifetime and never removed till his death, is part of her 'necessary wearing apparel,' 9 Bomb. 106. And all ornaments on her person, if forming part of her *stridhana*, are exempt from execution against her husband, 8 Bom. H. C., A. C. J. 129.

[3] In order to exempt from execution any of the debtor's cattle the Court must first express its opinion that such cattle are necessary to enable him to earn his livelihood, and the Court which has to decide this point is the Court which issues the execution, 10 Cal. 40.

[4] This exempts houses dwelt in by agriculturists as such and the farm-buildings appended to such dwellings, 7 Bom. 531. It does not exempt the materials of a house specifically mortgaged, 4 Bom. 25, where the mortgagee has obtained a decree for its sale.

[5] 3 Bom. H. C., O. C. J. 42. Though account-books cannot be attached and sold as waste paper, yet, to prevent a judgment-debtor from making away with his books and thus defeating a decree-holder, the Court executing a decree may, when the decree-holder applies to attach debts in execution, require the judgment-debtor to produce his books in Court and leave them in the Court's custody, 3 N. W. P. 334.

[6] 7 Ben. 187: 6 N. W. P. 95. 'Damages' here includes mesne profits, 9 Cal. 697, per Field J.

[7] 10 Bom. 395, e.g. the right of a *sebait* to perform the worship of an idol, 7 Suth. C. R. 266: 6 Bom. 300: 6 Ben. 728: 5 Ben. 617. Were the law otherwise the right might be sold to a Muhammadan or a Christian who might not be willing to worship the idol, and who could not, moreover, prepare its food. But see L. R., 6 I. A. 182, and 6 Bom. 596.

(*g*) stipends and gratuities allowed to military and civil pensioners of Government[1], and political pensions;

(*h*) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount[2];

(*i*) the pay and allowances of persons to whom the Native Articles of War[3] apply;

(*j*) the wages of labourers[4] and domestic servants[5];

(*k*) an expectancy of succession by survivorship, or other merely contingent or possible right or interest[6];

(*l*) a right to future maintenance[7].

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), and (*j*) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

(*a*) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(*b*) to affect the Army Act, 1881[8], or any similar law for the time being in force[9].

[1] 7 Suth. Civ. R. 169: 4 Mad. H. C. 277: 5 ibid. 371. This includes gratuities granted in consideration of past services, 5 Mad. 272: 6 All. 173. For 'pensioners' the word 'ex-servants' should have been used.

[2] 'Salary' here means pay actually drawn by the judgment-debtor at the time of the attachment or from time to time, 6 Mad. 179.

[3] See Act V of 1869, Part III, cl. (*b*).

[4] i.e. those who earn their daily bread by personal manual labour or in occupations which require little or no art, skill, or previous education, 5 Bom. 134.

[5] As to the meaning of this expression, see 8 Ben. 244, a case on the construction of a will.

[6] such as the interest of an heir expectant on the death of a Hindú widow in possession, 7 Ben. 341, and see 8 Suth. Civ. R. 253; or the interest which the vendor of land has in the purchase-money before execution of the conveyance, where it has been agreed that payment shall be made on such execution, 3 All. 12. A claim which may accrue under a pending award cannot be sold in execution, 7 Ben. 187: nor can the life-interest of the judgment-debtor in the residue of the property of a testator after full administration thereof, 6 Moore, I. A. 510. Whether a decree-holder who is also a partner of the judgment-debtor can attach the judgment-debtor's share in the partnership assets, the business being then in the hands of a receiver under a decree for dissolution and winding-up, see 5 Ben. 382, 386: 4 Bom. 222.

[7] 6 Suth. Mis. 64, col. 2: 7 Suth. Civ. R. 311: but see 10 Cal. 521 and 6 Ben. 646.

[8] 44 & 45 Vic. c. 58, sec. 151.

[9] 9 Mad. 170. The sale of arms by the názir of the Court, in execution of a decree, is a sale by a public

Power to summon and examine persons as to property liable to be seized.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree[1], and may require the person summoned to produce any document in his possession or power relating to such property[2], and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment of debt, share and other property not in possession of judgment-debtor.

268. In the case of (*a*) a debt not secured by a negotiable instrument, (*b*) a share in the capital of any public Company or Corporation, (*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting[3],

(*a*) in the case of the debt, the creditor from recovering the debt and the debtor[4] from making payment thereof until the further order of the Court[5];

(*b*) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon[6];

(*c*) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor[7], in the case of the share, to the proper officer of the Company or Corporation,

servant in discharge of his duty, and is therefore excluded from the operation of the Indian Arms Act, XI of 1878 (see sec. 1, cl. *b*), 9 Bom. 518.

[1] 22 Suth. Civ. R. 330.

[2] 3 N. W. P. 334.

[3] For forms of such order, see sched. IV, nos. 138. 139, 140.

[4] who is called the garnishee. That he cannot set-off a debt due to him by the decree-holder see L. R., 10 Q. B. 28.

[5] The Court cannot call on a person subject to a prohibitory order to pay, or show cause why he should not pay, his debt into Court. The Court must satisfy itself that a debt is due, and the debt must then be sold and delivery made under secs. 284 and 381, 10 Mad. 194. As to the position of a judgment-creditor attaching a debt under this section as regards prior assignees, see 8 Bom. H. C., O. C. J. 169.

[6] Cf. the English rules as to distringas, 1 & 2 Vic. c. 100, ss. 14, 15: 3 & 4 Vic. c. 82, s. 1: Order xlvi. r. 1.

[7] It is not enough to affix it to the wall of the debtor's dwelling-house, 10 Ben. Appx. 12.

and in the case of the other moveable property (except as aforesaid), to the person in possession of the same[1].

A debtor[2] prohibited under clause (*a*) of this section may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court[3].

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

269. If the property be moveable property[4] in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Attachment of moveable property in possession of judgment-debtor.

Provided that when the property seized is subject to speedy and natural decay[5], or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once. Proviso.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of Power to make rules for main-

[1] The execution-creditor cannot enforce his rights to the property mentioned in this section by *suit*. He must follow the procedure which it prescribes, L. R., 3 I. A. 241, 251, per Sir B. Peacock.

[2] See note 4, p. 570.

[3] 5 Bom. 198. A provincial Court of Small Causes must adopt the machinery of sec. 223 when execution is sought against persons or property outside its local jurisdiction. Where the salary of a public officer is disbursed outside that jurisdiction the Court cannot therefore attach it under this clause, 6 All. 243.

[4] See the General Clauses Act, sec. 2, cl. (*b*), vol. I. of this work, p. 488.

[5] as in the case of green fruit and vegetables, milk, fish, and meat.

tenance of attached live-stock.

live-stock and other moveable property[1], and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment of negotiable instruments.

270. If the property be a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

Seizure of property in building.

271. No person executing any process under this Code directing or authorising seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house[2]. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be[3]:

Seizure of property in zanánás.

Provided that, if the room be in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of

272. If the property be deposited in, or be in the custody[4]

[1] See *Fort St. George Gazette*, 14 Aug. 1883, Part I, p. 515. *Calcutta Gazette*, 16 April, 1879, Part I, p. 356; 18 July, 1883, Part I, p. 621. *N. W. P. and Oudh Gazette*, 15th Oct. 1881, Part II, p. 1083; 17th Nov. 1883, Part I, p. 622. Panjáb notification No. 3858, dated 3rd Oct. 1877. *Central Provinces Gazette* 1877, Part I A, p. 303. *Assam Gazette*, 6 Sep. 1879, Part I, p. 538. As to Coorg see the *Mysore Gazette*, 26 June, 1880, Part I, p. 167.

[2] Even though the defendant has absconded to evade the execution, 8 Bom. H. C., A. C. J. 127, where the Court held that the privilege extended also to an out-house or any office annexed to a dwelling-house; but not to a building standing some distance from the dwelling-house, and not forming part of it. That a bailiff may break open the door of a shop or godown, see 3 Bom. 89.

[3] 5 Mad. H. C. 189. As to the liability of a judgment-creditor who attaches property not belonging to his judgment-debtor, see 8 Bom. H. C., A. C. J. 177: 3 Bom. 74: 3 Ben. A. C. J. 414.

[4] i.e. actual custody, 7 Mad. 48.

of, any Court or public officer, the attachment shall be made by a notice[1] to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues[2]:

Property deposited in court or with Government officer.

Provided that, if such property is deposited in, or is in the custody[3] of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court[4].

Proviso.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree[5].

Attachment of decree for money.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(*a*) the Court which passed the decree sought to be executed cancels the notice, or

(*b*) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees[6] the attachment shall be

Attachment of

[1] See form, Sched. IV. no 142.

[2] Suggested by the English stop-order.

[3] i. e. actual custody, 7 Mad. 48.

[4] and not by the Court which made the order of attachment, 7 Cal. 555. When the property attached is deposited with the Collector, the Court has no such jurisdiction, 13 Suth. Civ. R. 301, col. 2.

[5] Attachment under this section of a money-decree cannot lead to its sale, 2 All. 290: 6 Mad. 418. Secus, apparently, in the Lower Provinces, 7 Ben. 318: 6 Cal. 213, 243.

[6] 2 All. 290.

may postpone it pending the investigation of the claim or objection[1].

Evidence to be adduced by claimant.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed[2] of, the property attached.

Release of property from attachment.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment[3].

Disallowance of claim to release.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim[4].

Continuance of attachment subject to incumbrance.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien[3].

Suits to establish right to attached property.

283. The party against whom an order under section 280, 281, or 282 is passed may institute a suit to establish the right which he claims to the property in dispute[5], but, subject to the result of such suit, if any, the order shall be conclusive[6].

[1] 12 Cal. 696: 11 Bom. 118: 9 All. 232.

[2] on his own account, and not, e.g., as a trustee for, or tenant of, the judgment-debtor.

[3] As to suits by persons against whom orders are passed under sec. 280, 281, or 282, see the Limitation Act, Sched. II. art. 11.

[4] 4 All. 190.

[5] 9 Cal. 888: 11 Cal. 673: 10 Bom. 659. A suit under sec. 283 does not lie in a provincial Court of Small Causes, Act IX of 1887, Sched. II.

[6] 9 Bom. 35: 1 All. 381: 4 Mad. 131.

284. Any Court may[1] order that any property which has been attached[2], or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order sale and proceeds to be paid to person entitled.

285. Where property not in the custody[3] of any Court has been attached in execution of decrees of more Courts than one[4], the Court which shall receive or realise such property and shall determine any claim thereto, and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached[5].

Property attached in execution of decrees of several Courts.

G.—Of Sale and Delivery of Property.

(a) General Rules.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint[6], and, except as provided in section 296, shall be made by public auction[7] in manner hereinafter mentioned.

Sales by whom conducted and how made.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court[8]. Such proclamation shall state the time[9]

Proclamation of sales by public auction.

[1] 4 Bom. 522, 523: 2 All. 752: 3 All. 504. He may also apply for a review of the order, 7 Suth. Civ. R. 79, col. 2. But see 3 Mad. H. C. 220. This section is not an exception to sec. 545, 6 Mad. 98.

[2] That a regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, see 5 All. 91, per Straight J. See 12 Cal. 322.

[3] i.e. actual custody, 7 Mad. 48.

[4] and such attachments are existing at the same time, 6 All. 255, 258.

[5] 6 Mad. 357: 4 All. 361: 12 Cal. 338. This section applies to immoveable, as well as to moveable property, 7 Mad. 48, 49, following 3 All. 356. The doubt was raised in 7 Cal. 413.

[6] 12 Suth. Civ. R. 238; where the Court held that the words 'whom the Court may appoint' applied to the 'officer' as well as the 'other person.'

[7] As to sham bidders at such auctions see the Penal Code, s. 228, supra, vol. I, p. 183, and 9 Moo. I. A. 324.

[8] It cannot refuse to sell on the ground that a stranger impeaches the decree as having been fraudulently obtained, 8 Bom. 533. He should sue for an injunction.

[9] The sale should not be on a holiday or when the Courts are closed, 3 Suth. Misc. 24.

and place of sale[1], and shall specify as fairly and accurately as possible—

(*a*) the property to be sold;

(*b*) the revenue assessed upon the estate or part of the estate[2], when the property to be sold is an interest in an estate[2] or a part of an estate paying revenue to Government[3];

(*c*) any incumbrance to which the property is liable[4];

(*d*) the amount for the recovery of which the sale is ordered, and

(*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property[5].

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto[6].

Rules to be made by High Courts.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law[7]. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder

[1] so as to give due notice to intending purchasers, 12 Suth. 488.

[2] i.e. aliquot part of an estate, 11 Ben. 56.

[3] 9 Cal. 656.

[4] The amount of the incumbrance still outstanding should be specified, 7 Cal. 34, 41-42. He that causes the property of his judgment-debtor to be sold in execution cannot afterwards set up any claim of his own against that property unless he shows that the purchaser bought with notice of his claim, 10 Cal. 611, following 3 Ben. A. C. J. 407: 24 Suth. Civ. R. 263, and 1 Bom. 314.

[5] If, therefore, the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no such debt exists, the Court should satisfy itself of the existence, or otherwise, of the debt, and if it comes to the conclusion that the debt does not exist, should abstain from proceeding to sale, 4 Bom. 326.

For a form of warrant of sale under this section see sched. IV, no. 145.

[6] As to the issue of a new proclamation where portion of the property is released from attachment, see 3 Cal. 544; and where the sale is postponed, see sec. 291 infra.

[7] See *Bombay Government Gazette*, 8 Feb. 1883, Part I, p. 119: *N. W. P. and Oudh Gazette*, 16 April 1881, Part II, p. 365; *ibid.* 12th Nov. 1881, Part II, p. 1143; 24 Feb. 1883, Part II, p. 158: *Assam Gazette*, 22 March 1879, Part I, p. 208.

of Rangoon shall be deemed to be a 'High Court' within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly. Indemnity of Judges, etc.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached[1], and a copy thereof shall then[2] be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office. Mode of making proclamation.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent[3] in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale[4]. Time of sale.

291. The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court[5]. Power to adjourn sale.

[1] When distinct properties are proclaimed for sale in one execution, a copy of the order must be fixed up on each property, 11 Cal. 76.

[2] As to the former law, see 4 All. 301.

[3] 5 Cal. 259.

[4] An infringement of this rule vitiates the sale, 7 All. 289; and see 5 Cal. 878, where an order confirming a premature sale was set aside under sec. 622.

[5] The applicant for an adjournment ought to show, (1) that serious injury

Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Stoppage of sale on tender, or proof of payment.

Officers concerned in execution-sales not to bid or buy.

292. No officer[1] having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

Defaulting purchaser answerable for loss by re-sale.

293. The deficiency of price (if any) which may happen on a re-sale under this Code[2] by reason of the purchaser's default[3], and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter[4] under the rules contained in this chapter for the execution of a decree for money[5].

Decree-holder not to bid or buy without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property[6].

If decree-holder pur-

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if

will be caused to him in case it is not granted, and (2) that he has applied for it promptly, see 10 Moo. I. A. 327, and 5 Mad. H. C. 410.

[1] This does not include the pleaders of the parties to the suit, 10 Mad. 111; but see N. W. P. 46.

[2] See infra, secs. 297, 306, 308, and 7 Cal. 337.

[3] A purchaser at a court-sale who fails to pay the deposit required by sec. 306 is a defaulting purchaser within the meaning of sec. 293, 5 Bom. 575.

[4] but not from his agent, 20 Suth. Civ. R. 80.

[5] The defaulter is not bound to pay interest on the amount of the deficiency and expenses, 9 Suth. Civ. R. 500.

[6] 5 Cal. 308. When such permission is given the decree-holder is bound to exercise the most scrupulous fairness in purchasing the property; and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside, 7 Cal. 347. No appeal lies from an order refusing permission, 13 Cal. 174. When the decree-holder buys without permission the sale is not *ipso facto* void; but stands until set aside under s. 294, para. 3.

he so desires, be set-off against one another[1], and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

chase, amount of decree may be taken as payment.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order[2] set aside the sale[3]; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder[4].

295. Whenever assets[5] are realised[6] by sale or otherwise[7] in execution of a decree, or more persons than one[8] have, prior to the realisation, applied to the Court by which such assets are held for execution of decrees for money[9] against the same judgment-debtor[10], and have not obtained satis-

Proceeds of execution-sale to be divided rateably among decree-holders.

[1] Where there are competing decree-holders who have applied for execution of their decrees, sec. 294 must be taken as subject to sec. 295. So that the decree-holder who has been permitted under the former section to purchase in execution of his own decree must share the proceeds rateably with his competitors and will not be allowed to set-off the purchase-money against the amount due on his decree, 6 Bom. 570, 5 Mad. 123.

[2] Such orders are appealable, sec. 588, cl. (16), within 30 days from the date of sale, Act XV of 1877, sched. II, art. 166.

[3] the judgment-debtor or other person interested must show that he has sustained some substantial injury arising from the irregularity, 11 Cal. 731. The purchase is not void *ab initio*, but only voidable on the application of the judgment-debtor etc., 11 Bom. 590.

[4] See 10 Cal. 759, where the decree-holder without permission bid and bought *benâmi*. The judgment-debtor cannot sue to set aside the sale, see sec. 244 and 5 Mad. 217.

[5] 10 Mad. 61. This includes money paid into court by sale or otherwise in execution of a decree, 6 Bom. 16, but not money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, 6 Bom. 588.

[6] from the property of the judgment debtor, 6 Bom. 588.

[7] i.e. by other process of execution provided for by the Code, 13 Cal. 225.

[8] i. e. more decree-holders than one of the same Court. The words 'more persons than one' do not include outsiders or decree-holders of other Courts, except perhaps those appearing on certificates under the provisions of chap. XIX, 5 Bom. 201.

[9] This includes a decree for mesne profits, 5 Mad. 124, a mortgage-decree directing the mortgage-money to be realised from the mortgaged property and from the mortgagor personally, and indeed every other decree by virtue of which money is payable, 11 Cal. 718.

[10] i.e. the judgment-debtor or the judgment-debtors, whose property has been sold in execution of the decree, 9 Cal. 922: If there is one decree against *A*, and another decree against *A* and *B*, and the decree-holders in each case apply for execution against *A*, but execution is taken out and

faction thereof, the assets, after deducting the costs of the realisation, shall be divided rateably among all such persons[1]:

Provided as follows :—

Proviso where property is sold subject to mortgage.

(*a*) when any property is sold subject to a mortgage or charge[2], the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(*b*) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold[3]:

Proviso.

(*c*) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances[4] (if any); and

fourthly, rateably among the holders[5] of decrees for money against the judgment-debtor[6], who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled

assets realised in one case only, the decree-holders under each decree would under this section be entitled to a rateable share of the assets, 9 Cal. 920.

[1] 4 Bom. 472; 12 Cal. 294, 321. This section and sec. 266, clause (*c*) and explanation (*a*) must be read together. An ordinary judgment-creditor is not, therefore, entitled to a rateable proportion of the assets realised by the sale of a house belonging to and occupied by an agriculturist, under a decree obtained by another creditor for rent due to him in respect of such house, 4 Bom. 429.

[2] i.e. sold with express notice of a mortgage or charge, 14 Suth. Civ. R. 209: 21 ibid. 43: 5 Bom. 477.

[3] 10 Cal. 567, where no such order was made. Orders under sec. 295 may be revised under sec. 622, 4 Mad. 383.

[4] according to their priority, 7 All. 378, 381.

[5] i.e. *bonâ fide* holders, 11 Cal 42. Where the Court cannot satisfy itself as to the *bona fides* of the claim, it should exclude the claimant from the distribution of assets.

[6] whose immoveable property has been sold in execution of a decree, 9 Cal. 922.

to receive the same, any person so entitled may sue such person to compel him to refund the assets[1].

Nothing in this section affects any right of the Government[2].

(b) *Rules as to Moveable Property*[3].

Rules as to negotiable instruments and shares in public Companies.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may[4], instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker at the market-rate of the day.

Payment for other moveable property sold.

297. In the case of other moveable property[5], the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs[6], and, in default of payment, the property shall forthwith be again put up and sold[7].

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property. Person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery[8].

Delivery of move-

299. When the property sold is a negotiable instrument

[1] 9 Suth. Civ. R. 515. Such a suit cannot be brought in a provincial Court of Small Causes, Act IX of 1887.

[2] And the rule of procedure contained in it does not interfere with the substantive rights of the parties, 10 Cal. 576.

[3] There is no provision (like sec. 313 as to immoveable property) that the purchaser at an execution-sale of moveables may have the sale set aside on the ground that the person whose property purported to be sold had no saleable interest in it. The execution-creditor does not warrant the title, and as in the case of a sale in England by the sheriff of goods seized under a *fi. fa.* the buyers buy at their own peril, 2 Bom. 264.

[4] if it thinks fit, 8 Suth. Civ. R. 415.

[5] See the General Clauses Act, supra, vol. I. p. 488.

[6] 4 N. W. P. 37.

[7] In case of a deficiency on the resale, see sec. 293.

[8] 6 N. W. P. 252, following 9 Suth. Civ. R. 118.

able property actually seized.

or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of property to which judgment-debtor entitled subject to lien.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice[1] to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of debts and of shares in Companies.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser[2], or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser[3].

Transfer of negotiable instruments and shares.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—'*A. B.*, by *C. D.*, Judge of the Court of (*or as the case may be*); in a suit by *E. F.* against *A. B.*'

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all

[1] See form, sched. IV, no. 146. [2] See form, sched. IV, no. 147.
[3] See form, sched. IV, no. 148.

purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly. Vesting order in case of other property.

(c) *Rules as to Immoveable Property.*

304. Sales of immoveable property[1] in execution of a decree may be ordered by any Court[2] other than a Court of Small Causes. What courts may order sales of land.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper[3], to enable him[4] to raise the amount. Postponement of sale to enable defendant to raise amount.

In such case the Court shall grant a certificate to the judgment-debtor authorising him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor: Certificate to judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser[5] shall pay Deposit by purchaser of immove-

[1] See supra, vol. I. p 487. A decree charging immoveable property has been held to be itself 'immoveable property' within the meaning of secs. 304-317, 1 All. 348.

[2] When the property is situate outside the local limits of its jurisdiction, see sec. 223.

[3] 5 Mad. H.C. 272: 15 Suth. Civ. R. 322. A year is too much, 2 N. W. P. 1.

[4] The Court itself cannot mortgage or let the property, Suth. 1864, Misc. 5.

[5] This includes a decree-holder to whom a lot is knocked down, Suth. 1864, Misc. 30.

able property.

immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money[1] to the officer conducting the sale, and, in default of such deposit[2], the property shall forthwith be put up again and sold[3].

Time for payment in full.

307. The full amount of purchase-money shall be paid by the purchaser[4] before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day[5].

Procedure in default of payment.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification on re-sale of immoveable property.

309. Every re-sale[6] of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Co-sharer of share to have preference in bidding.

310. When the property sold in execution of a decree is a share of undivided immoveable property[7], and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer[8].

Setting aside sale

311. The decree-holder[9], or any person whose immoveable

[1] Unless this payment is made at once, there is no sale, 5 All. 316.

[2] No deposit, no sale, 5 All. 316.

[3] Disputes as to whether the deposit was offered should be decided by the Judge before commencing a second sale, 6 Mad. 197.

[4] into court, or, in the Lower Provinces and Madras, into the Government Treasury.

[5] For the purposes of this section payment into the Government Treasury is, in the Lower Provinces and Madras, equivalent to a payment into Court, 8 Cal. 528 and 7 Mad 211.

[6] not every *postponed* sale, 1 Suth. Misc. 3.

[7] This does not include the case where the property is the interest of a mortgagee in such a share, 3 All. 15.

[8] This section contemplates a distinct bid by the co-sharer, 3 All. 827, following 2 All. 850; and see 6 N. W. P. 272: 7 N. W. P. 281.

[9] This includes both a decree-holder who has attached and one who has entitled himself to a rateable distribution under sec. 295, 10 Mad. 57.

property has been sold[1] under this chapter, may apply[2] to the Court to set aside the sale on the ground of a material irregularity[3] in publishing or conducting it[4]; of land on ground of irregularity.

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity[5].

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed[6], the Court shall pass an order[7] confirming the sale as regards the parties to the suit and the purchaser. Effect of objection being disallowed and of its being allowed.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale[8].

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

[1] These words do not include a mere co-sharer in undivided immoveable property, 5 All. 42, or a person who has purchased the property at a prior execution-sale, such prior sale not having been confirmed, 8 Cal. 367. But see 2 All. 352, 396: 13 Cal. 346 (mortagees who had obtained a foreclosure-decree): 14 Cal. 240 (person alleging that his property has been sold in execution).

[2] within 30 days from the date of the sale, Act XV of 1887, sched. II, art. 166.

[3] 8 All. 116.

[4] The expression 'conducting the sale' refers to the action of the officer conducting the sale, not to anything done before the order of sale, 7 All. 641.

[5] 9 Cal. 656: 11 Cal. 658. Thus the use at a sale of depreciatory language by the execution-creditor who was bidding by his agent, 5 Cal. 308: not affixing copy of sale-proclamation, 7 Cal. 466: or not stating the amount of Government revenue in the sale-proclamation, may be properly objected to in the Court of first instance; L. R., 10 Ind. App. 25. But mere inadequacy of price is not a 'material irregularity,' 8 Bom. 424. Nor is selling on a close holiday, 3 All. 333. Nor is the omission to state the amount of rent payable in respect of a tenure brought to sale, 7 Cal. 723. Nor is fraud, 7 Bom. H. C. 74: 8 Suth. Civ. R. 506. A sale will not be set aside because the decree having been passed more than twelve years before, the execution had been barred by limitation, 6 Mad. 238. And the death of the decree-holder before the sale does not render it void, 3 All. 765; and see 7 All. 365.

[6] by the Court before which the proceedings under sec. 311 are taken, 11 Cal. 287, not by the appellate Court.

[7] See form, sched. IV, no. 149. An appeal to the High Court lies from this order, secs. 588, cl. (16), and 589.

[8] and directing by whom the sale-expenses should be paid, 6 N. W. P. 309. No appeal lies from such order, 11 Bom. 603.

Application to set aside sale on ground of judgment-debtor having no saleable interest.

313. The purchaser at any such sale may apply[1] to the Court[2] to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest[3] therein, and the Court may make such order[4] as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor[5] and the decree-holder have had opportunity of being heard against such order[6].

Confirmation of sale.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court[7].

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest[8] in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

[1] within 60 days from the date of the sale, Act XV of 1877, sched. II, art. 172.

[2] not to the Collector to whom the decree in execution of which the sale is made has been transferred, 9 All. 43.

[3] at the time of sale, 9 Cal. 220. That an incumbrance upon a property sold in execution is not enough to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property, see 9 Cal. 506, 627, and 10 Cal. 372. See too 9 All. 167, where the incumbrance exceeded the probable value of the property. The meaning is that, if a purchaser under an execution-sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale. But misrepresentation or concealment in the notification which induces the purchaser to pay much more than the real value is no ground for applying under this section, 10 Cal 372.

[4] An appeal lies from such order to the High Court, secs. 588, cl. (16), 589.

[5] or where he has died, his legal representative, 7 Bom. 424. The section should expressly provide for giving notice to the judgment-debtor or his representative, 7 Bom. 424.

[6] Section 313 is designed for the protection of persons who ignorantly and innocently purchase valueless property. It does not apply to one who buys knowing that the judgment-debtor had no saleable interest, 3 All. 527. Under this section the purchaser may resist the confirmation of the sale and so prevent its conclusion. Under sec. 315 he may apply after the confirmation for the refund of the purchase-money, on the ground that nothing has passed by the sale, 8 Mad. 101.

[7] That the price is low is in itself no ground for refusing to confirm the sale, L. R., 3 I. A. 230: 10 I. A. 25: 8 Bom. 425.

[8] 5 All. 577.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money[1].

Certificate to purchaser of immoveable property.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate[2] stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before[3]: provided that the decree under which the sale took place was still subsisting[4] at that date.

Bar to suit against purchaser buying benámí.

317. No suit shall be maintained against the certified purchaser[5] on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims[6].

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in

[1] The last clause of sec. 315 does not, of course, bar a suit for the recovery of the purchase-money and for interest, 5 All. 577. That the purchase-money may be paid to the decree-holder before the sale is confirmed, see 12 Cal. 252.

[2] See form, sched. IV, no. 150. As to registering this certificate, see 9 Cal. 82: 7 Mad. 248, 419: 6 Bom. 495: 5 All. 568.

[3] As to the effect of the certificate if registered, see the Registration Act, infra, sec. 50: 7 Mad. 248.

[4] A 'subsisting' decree is a decree unreversed and in full force, 7 Cal. 91, 96, not a decree the execution of which is not time-barred, 11 Cal. 376. Before the purchaser applies to the court to confirm the sale and grant him a certificate, he ought to ascertain that the decree under which the sale was ordered is still in existence, 2 Bom. 540. When a sale takes place under a decree, which at the time of sale is in force, the subsequent reversal of the decree on appeal or review does not vitiate the sale, 5 Ben. 70. But a sale under a decree passed without jurisdiction (4 All. 382), and afterwards set aside on that account, is void, 6 Ben. App. 90; and so where the execution of the decree is at the time of sale barred by limitation, 5 Ben. 68.

[5] As to the meaning of 'certified purchaser,' see 13 Suth. Civ. R. 85 and 5 All. 478.

[6] The object of this section is to discourage agreements for the purchase of property, at a Court-sale, in the name of another: it does not apply to a suit by a stranger to the agreement, to set it aside as made in fraud of the plaintiff's rights as a member of the family to which the purchase-money belonged, 6 Mad. 137; and see 8 Mad. 511 and 12 Cal. 204.

the certificate fraudulently or without the consent of the real purchaser.

Delivery of immoveable property in occupancy of judgment-debtor.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser[1], order[2] delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of immoveable property in occupancy of tenant.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall[3] order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Power to transfer to Collector execution of decrees for sale of immoveable property.

320. The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector[4], and rescind or modify any such declaration.

Power to prescribe rules as to transmission of decrees.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector,

[1] within three years from the date of the certificate, 8 Bom. 257.

[2] See form, sched. IV, no. 151.

[3] on application by the purchaser within three years from the date of the sale-certificate, 3 Bom. 433. He may also sue for possession within twelve years, 10 Cal. 402.

[4] Thereupon the civil Courts cease to have jurisdiction to execute the decree, 4 All. 382; but see 7 All. 407.

and for regulating the procedure of the Collector and his subordinates in executing the same[1], and for re-transmitting the decree from the Collector to the Court.

321. When the execution of a decree has been so transferred, the Collector may—

Power of Collector when execution of decree is so transferred.

(*a*) proceed as the Court would proceed under section 305; or

(*b*) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(*c*) sell the property ordered to be sold or so much thereof as may be necessary[2].

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Procedure of Collector when execution of decree so transferred.

322 A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

Notice to decree-holders and to persons having claims on property.

(*a*) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending,

[1] See *Bombay Government Gazette*, Part I, 29 Jan. 1880, pp. 96, 97: *ibid.* 26 Feb. 1880, p. 214: *ibid.* 3 June, 1880, p. 519: *ibid.* 17 Feb. 1881, p. 83: *ibid.* 17 March, 1881, p. 140: *ibid.* 27 July, 1882, p. 557; 17 May, 1883, p. 358, and the *N. W. P.* and *Oudh Gazette*, Part I, 4 Sept. 1880, p. 340; 6 Nov. 1880, p. 310; 18 Nov. 1880, 25 June 1881, p. 253, 19 May 1883, p. 325. *Central Provinces Gazette*, 1877, Part I. A. p. 313: *ibid.* 1881, Part II, p. 102. *British Burma Gazette*, March 1883, Part I, p. 92: *ibid.* Jan. 1884, Part I, p. 23.

[2] He is limited to one of these three courses, and may not (e. g.) allow payment by instalments, 7 Bom. 332. Orders passed by him under this and the following sections are not appealable to the High Court, 5 All. 314. And notwithstanding the opinion of West J. in 7 Bom. 332, it would seem that the Court has no power to recall a case sent to the Collectors: see 5 All. 314; and consider 8 Bom. 301.

to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(*b*) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction.

322 B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall

then draw up a statement as above provided in accordance with such decision.

322 C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322 A and 322 B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322 A and 322 B, and transmit such statement to the Collector[1].

When District Court may issue notices and hold inquiry.

322 D. The decision by the Court of any dispute arising under section 322 B or section 322 C shall, as between the parties thereto, have the force of, and be appealable as, a decree[2].

Decision of Court as to dispute under s. 322 B or 322 C.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322 B or 322 C, the Collector may—

Scheme for liquidation of money-decrees.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by selling part of such property; or

(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term

[1] See Act XII of 1887, sec. 23, cl. 2 (*e*).

[2] An appeal from such a decision has been held to be cognisable as a 'miscellaneous' appeal, i.e. an appeal not from a decree passed in a regular suit, 4 Mad. 420. As to the stamp, see the Court Fees Act, sched II, art. 11, and 7 All. 565, dissenting from 4 Mad. 420.

not exceeding twenty years from the date of the order of sale; or

(*e*) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Chief Controlling Revenue-authority[1].

Recovery of balance after letting or management.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realised, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration

[1] See *N. W. P. and Oudh Gazette*, 27 Nov. 1880, pp. 1181-4: *Central Provinces Gazette*, June 1878, Part I A. p. 101: *British Burma Gazette*, 26 Jan. 1884, Part I, p. 27.

of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

324 A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court. **Collector to render accounts to civil Court.**

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows :— **Application of balance.**

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

325. When the Collector sells any property under this **Sales how conducted.**

chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(*c*) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment-debtor and prosecution of remedies by decree-holders.

325 A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for money.

During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

Provision where property is in several districts.

325 B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Attendance of witnesses and production of documents

325 C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may[1] authorise[2] the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325 c (both inclusive) shall apply, as far as they are applicable[3].

When Court may authorise Collector to stay public sale of land.

327. The Local Government may, from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value:

Local rules as to sales of land in execution of decrees for money.

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law[4].

[1] in its discretion, 9 Cal. 293. For the purpose of effectually exercising that discretion, the Court is bound to hear any objections which the decree-holder may make to the feasibility of the proposed scheme, and any evidence offered in support of those objections, ibid. 295.

[2] See form, sched. IV, no. 152.

[3] This section does not apply to a decree directing the sale of land, or of a share of land, in pursuance of a contract specifically affecting the same, 2 All. 856: see sec. 322. And it does not enable the Court to authorise the Collector to allow payment by instalments not mentioned in the decree, 2 N. W. P. 347: 6 N. W. P. 39.

[4] See *Calcutta Gazette*, 10 July 1878, Part I, p. 736, and 7 Jan. 1880, Part I, p. 3. Panjáb Notification, No. 3829, dated 3 Oct. 1877. As to Coorg, see *Mysore Gazette*, 14 June 1879, Part I, p. 200.

II.—Of Resistance to Execution.

Procedure in case of obstruction to execution of decree.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may[1] complain to the Court at any time within one month[2] from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

Obstruction by judgment-debtor or at his instigation.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation[3], the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit[4].

When obstruction continues.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Obstruction by

331. If the resistance or obstruction has been occasioned

[1] That this section is not obligatory on the decree-holder, see 8 Bom. 608.

[2] See the Limitation Act (XV. of 1877), sched. II, art. 167, where the period is 30 days. The day on which the resistance took place is excluded, Act I of 1868, sec. 3, cl. (2), 5 Bom. H. C. 39, and see 7 All 91: 5 Mad. 113.

[3] Where the resistance is by third parties see sec. 331, 3 Mad. 81.

[4] See form, sched. IV, no. 153: 8 Suth. Civ. R. 79: 12 ibid 98. Such an order should be the reasonable result of the fact that the defendant unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. Section 329 does not empower the Court to decide important questions, the merits of which are wholly apart from, and cannot be affected by, the fact that the obstruction was caused at the instigation of the defendant, 3 Mad. 85. Orders under this section passed between parties are appealable, 3 Mad. 84.

by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant[1];

claimant in good faith, other than judgment-debtor.

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate[2] the claim in the same manner and with the like power[3] as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree[4], and shall be subject to the same conditions as to appeal or otherwise[5].

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account[6] or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit[7] in which the decree was passed, he may apply to the Court[8].

Person dispossessed disputing right of decree-holder to be put into possession.

[1] Refusal to number and register the claim as a suit is appealable, 14 Cal. 234.

[2] 10 Cal. 50.

[3] 4 Mad. 220.

[4] It may e.g. be pleaded as *res judicata*: secus under the Code of 1877, 3 Mad. 104.

[5] This section must be read as an exception to sec. 15. A Court executing a decree obtains by virtue of sec. 331 a special jurisdiction enabling it to try a claim though the amount or value of the subject-matter falls below the pecuniary limit of its ordinary jurisdiction, 8 Mad. 548.

[6] A mortgagee in possession under the mortgage is within these words, 2 All. 94. A person claiming under this section need not prove his title, but only the fact of possession, ibid.

[7] Suth. 1864, Misc. 18.

[8] within 30 days from the date of the dispossession, Act XV of 1877, sched. II, art. 165.

If, after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit[1] to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final[2].

Transfer by judgment-debtor after suit instituted.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Obstructing purchaser in obtaining possession of immoveable property.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable[3].

Obstruction by claimant other than judgment-debtor.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit[4].

[1] 8 Mad. 82.

[2] Neither art. 11 nor art. 13 of the second schedule to the Limitation Act applies to such suits, 8 Mad. 82.

A suit under sec. 322 does not lie in a provincial Court of Small Causes, Act IX of 1887, sched. II.

[3] 13 Suth. Civ. R. 467.

[4] 7 Suth. Civ. R. 87: 19 ibid. 219. The power to apply under this paragraph does not, of course, bar a suit to recover possession, 10 Mad. 53.

The party against whom such order is passed may[1] institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final[2].

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day[3], and shall as soon as practicable be brought before the Court, and his imprisonment[4] may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Place of judgment-debtor's imprisonment.

Provided as follows:—

(*a*) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public[5], the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

Arrest.

(*b*) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the

Release on payment.

[1] within one year from the date of the order, Act XV of 1877, sched. II, no. 11.

[2] It may, however, be revised by the High Court under sec. 622, 6 All. 172, following 7 Bom. 341.

[3] e.g. Sunday, 4 Mad. H. C. Rulings, lxii, a case in the mufassal. The Lord's Day Act, which was held to be in force in the Presidency towns, was repealed by Act X of 1877.

[4] under sec. 342; see 11 Cal. 458.

[5] If she is the judgment-debtor he is bound to go in at once and arrest her, 7 Cal. 19, 21.

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arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette [1], direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest [2]:

But if he fails so to apply, the Court may either direct the security to be realised or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 253.

Warrant for arrest to direct judgment-debtor to be brought up.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court [3] with all convenient speed [4], unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid [5].

[1] See *Fort St. George Gazette*, Part I, 23 Oct 1877, p. 652: *Bombay Government Gazette*, Part I, 22 Nov. 1877, p. 998: *Calcutta Gazette*, 6 Aug. 1879, Part I, p. 809: *N. W. P. and Oudh Gazette*, 6 Oct 1877, 1343: Panjáb Notification, No. 3860, dated 3 Oct. 1877: *Central Provinces Gazette*, Oct. 1877, Part I A, p. 305: *British Burma Gazette*, Nov. 1878, Part II, p. 271.

[2] This clause applies to Small Cause Court debtors, 2 Mad. 9. In the Presidency towns, where a judgment-debtor, arrested in execution of a decree of the High Court in its original civil jurisdiction and brought before the Court under the provisions of section 336, expresses his intention to file a petition and schedule under 11 & 12 Vic. c. 21, he will be released on complying with the conditions of that section, 8 Mad. 276.

Sec. 336 does not apply to judgment-debtors committed to jail. As to them see sec. 341.

[3] 11 Cal. 527.

[4] Bourke, O. C. J. 59.

[5] See form, sched. IV, no. 154.

338. The Local Government may, from time to time, prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors[1]. Scales of subsistence-allowances.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court. Judgment-debtor's subsistence-money.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month[2].

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail[3].

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit: Subsistence-money to be costs in suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged from jail[4], Release of judgment-debtor.

(*a*) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

[1] See notifications by the Local Government of Madras, Macpherson's *Lists*, 1884, p. 115: *Central Provinces Gazette*, Oct. 1877, Part I A, p. 304: *British Burma Gazette*, Jan. 1878, Part II, p. 10: *ibid.*, Oct. 1878, Part II, p. 265.

[2] 5 Bom. Appx. 79, 80.

[3] The provisions of this section as to subsistence-allowances apply to all defendants arrested under chap. XXXIV. See sec. 482 infra.

[4] The provisions of this section govern the imprisonment directed under sec. 254, 12 Cal. 657.

(*b*) on the decree being otherwise fully satisfied; or

(*c*) at the request of the person on whose application he has been imprisoned; or

(*d*) on such person omitting to pay the allowance as hereinbefore directed [1]; or

(*e*) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(*f*) when the term of his imprisonment, as limited by section 342, is fulfilled [2]:

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned [3].

Imprisonment not to exceed six months. When not to exceed six weeks.

342. No person shall be imprisoned in execution of a decree for a longer period than six months [4];

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees [5].

Endorsement on warrant.

343. The officer entrusted with the execution of the warrant [6] shall endorse thereupon the day on, and the manner

[1] When the warrant of commitment to jail had been made out, and the defendant, whilst in confinement in the court-house, was discharged owing to non-payment of the subsistence-allowance, he was held to have been 'discharged under this section,' 9 Bom. 181.

[2] The imprisonment need not be continuous, 5 N. W. P. 220.

[3] 4 Mad. H. C. 76. In the execution of a decree for an amount payable by instalments, the judgment-debtor cannot be arrested and imprisoned separately for default in the payment of each instalment, 7 Bom. 108. Sec. 341 read in connection with the definition of 'decree' shows that the legislature intended that he should not be imprisoned more than once under the same decree. But where, after arrest, but before imprisonment, the judgment-debtor is discharged on account of non-payment of subsistence-allowance, he may be re-arrested under the decree, 8 Mad. 21.

Where a judgment-debtor is discharged under this section his property remains liable to attachment and sale, Ben. F. B. 889.

[4] Imprisonment under sec. 481 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months mentioned in sec. 342, 7 Bom. 431.

[5] This section and section 341 do not apply to cases of imprisonment for contempt of court, 4 Cal. 657.

[6] But see 6 All. 385, where the endorsement was made by the naib nazir.

in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS [1].

Power to apply for declaration of insolvency.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money [2], or against whose property an order of attachment has been made in execution of such a decree [3], may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court [4] within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application.

345. The application, when made by the judgment-debtor, shall set forth—

(*a*) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(*b*) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

[1] This chapter applies to debtors on the original side of the Presidency High Courts, 11 Cal. 451: 8 Mad. 276.

[2] This will cover a decree for compensation for libel, 11 Cal. 453.

[3] and who has not filed a petition of insolvency in a Presidency town, under 11 & 12 Vic. c. 21, 21 Suth. Civ. R. 185.

[4] This includes the Deputy Commissioner of Akyab, 4 Cal. 94.

(*c*) the place or places in which such property is to be found[1];

(*d*) his willingness to put it at the disposal of the Court;

(*e*) the amount and particulars of all pecuniary claims against him; and

(*f*) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Signature and verification of application.

346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

Service of copy of application and notice.

347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

Power to serve other creditors.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant or applying for leave to be heard on the application.

[1] 10 Ben. Appx. 11.

349. Where the judgment-debtor is under arrest[1], the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon[2].

Powers of Court as to judgment-debtor under arrest.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Procedure at hearing.

351. If the Court is satisfied—

(*a*) that the statements in the application are substantially true[3];

(*b*) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time[4];

(*c*) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts[5] or given an unfair[6]

Declaration of insolvency and appointment of receiver.

[1] i.e. 'under detention' or 'detained in custody,' 11 Cal. 459; but not committed to jail, 8 Mad. 503.

[2] A bond given under this section cannot be enforced summarily, 7 Mad. 273.

[3] 14 Cal. 691. The burden of proof is on the debtor, see 8 Ben. 255, 264.

[4] The concealment etc. must be active: the clause does not cover a mere omission by the judgment-debtor to state his right to demand partition of ancestral estate in which he is a sharer, 7 All. 445.

[5] Relief may be given to persons, who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed, upon reasonable grounds, that they would have the means of paying eventually, 2 Mad. 222

[6] 3 All. 530.

preference to any of his creditors by any payment or disposition of his property;

(*d*) that he has not committed any other act of bad faith regarding the matter of the application [1]—

the Court may declare him to be an insolvent [2], and may also, if it thinks fit, make an order [3] appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order [3] rejecting the application [4].

Creditors to prove their debts.

352. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then [5] produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall by order [3] determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts [6].

Schedule to be framed.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm [7].

[1] i.e. the insolvency and all the facts and circumstances material to explain the insolvency, 2 Mad. 221: 12 Ben. Appx. 12.

[2] If the applicant has not brought himself within clauses (*a*), (*b*), (*c*) or (*d*) the Court has no discretion on other grounds to reject the application, 4 All. 337.

[3] That such orders are appealable to the High Court, see infra, sec. 588, cl. (17), sec. 589, 6 Cal. 168.

[4] Unintentional inaccuracies in the statements mentioned in cl. (*a*) are not sufficient grounds for rejection, 7 All. 295.

[5] This word refers to sequence of procedure, not to periods of time or dates, 5 All. 269.

[6] Unless the schedule is framed, the declaration does not operate as a decree, 7 Mad. 318. This section imposes a duty upon the creditors of the insolvent named in his application and upon the Court. The creditors must prove their debts if they intend to dispute the insolvent's statement in his application, and, on default, the Court ought to frame a schedule with reference to the particulars contained in the application, subject, however, to amendment, if necessary, under sec. 353, *ibid.*

[7] This is in accordance with *Read* v. *Bailey*, 3 App. Ca. 94.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply[1] to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved. **Applications by unscheduled creditors.**

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

354. Every order under section 351 shall be published in the local official Gazette and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not[2]. **Effect of order appointing Receiver.**

355. The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid; **Receiver to give security and collect assets.**

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit. **Discharge of insolvent.**

356. The Receiver shall proceed under the direction of the Court— **Duty of Receiver.**

(*a*) to convert the property into money:

(*b*) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government:

[1] within 90 days from the date of the publication of the schedule, Act XV of 1877, sched. II, art. 174.

[2] As to after-acquired property, see 8 Cal. 556.

(*c*) to pay the said decree-holder's costs:

(*d*) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property[1]:

(*e*) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

His right to remuneration.

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative:

Delivery of surplus.

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (*a*) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (*b*) the immoveable property of the insolvent remaining unsold, and (*c*) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

Effect of discharge.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired

[1] The receiver ought as a condition of dealing with mortgaged property in every case to pay off the mortgage, even when the mortgagee has not sought to be placed in the schedule and so rank as a judgment-creditor. The mortgagee's position is essentially different from that of the unsecured creditor, 7 Bom. 458.

(except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court[1], be liable to attachment and sale[2] until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

Declaration that insolvent is discharged from liability.

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third[3], or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant.

359. Whenever at the hearing under section 350, it is proved that the applicant has

(*a*) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(*b*) fraudulently concealed, transferred or removed any property; or

(*c*) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

Investment of other Courts with powers of

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive)[4], and the District Judge may transfer to

[1] Such order is appealable to the High Court: see infra, sec. 588, cl. (17), sec. 589.

[2] Ben. F. B. 889.

[3] 5 All. 258.

[4] See *Bombay Government Gazette*, 22nd Nov. 1877, Part I, p. 998; 11 Dec. 1879, Part I, p. 975: Panjáb Notifications, No. 3302, dated 10 Sept. 1879; No. 4123, dated 29 Oct. 1877:

District Courts. Transfer of cases.

any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court [1].

Central Provinces Gazette, Oct. 1877, Part I A, p. 305; *ibid.*, Jan. 1878, Part I A, p. 9; *ibid.*, May 1879, part I A, p. 238; *ibid.*, Jan. 1880, Part I A, p. 18: *British Burma Gazette*, Oct. 1879, Part II, p. 211: 4 Cal. 94. As to the Courts of Small Causes at Ajmer and Beawar, see *Gazette of India*, 6 Oct. 1883, Part II, p. 545.

[1] But it cannot entertain an application to be declared an insolvent, made by a judgment-debtor whose property has been attached, except where such application is transferred to it by the District Court, 7 Mad. 511; and see 8 Bom. 196 and 9 Mad. 113.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES[1].

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives[2].

No abatement by party's death, if right to sue survives.

Illustrations.

(*a*) *A* covenants with *B* and *C* to pay an annuity to *B* during *C*'s life. *B* and *C* sue *A* to compel payment. *B* dies before the decree: the right to sue survives to *C*, and the suit does not abate[3].

(*b*) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of *B* and *C*, and he may continue the suit against *A*'s representative.

(*c*) *A* sues *B* for libel. *A* dies. The right to sue does not survive, and the suit abates.

(*d*) *A*, a member of a Hindú joint family under the Mitákshará law, institutes a suit for partition of the family-property. *A* dies leaving *B*, a minor son, his heir. The right to sue survives to *B*, and the suit does not abate[4].

[1] In this chapter, so far as may be, the words 'plaintiff,' 'defendant' and 'suit' include 'appellant,' 'respondent' and 'appeal' respectively in proceedings arising out of the death etc. of parties to an appeal, sec. 582, infra.

[2] Cf. Order xvii. r. 1.

[3] *Anderson* v. *Martindale*, 1 East, 497.

[4] 4 All. 235. Other illustrations are:—

A commits a tort injuriously affecting *B*'s estate. *B* sues *A* for the tort, and dies before decree. The right to sue survives to *B*'s representative, and the suit does not abate, *Twycross* v. *Grant*, 4 C. P. D. 40.

A commits a tort on *B* by which *A*'s estate profits. *B* sues *A* for the tort. *A* dies before decree. The right to sue *A*'s representative survives, and the suit does not abate, *Ashley* v. *Taylor*, 10 Ch. D. 768.

A, the mother of *B*, a Hindú minor under the Mitákshará law, sues on *B*'s behalf to set aside an alienation, by *B*'s father, of ancestral property. *B* dies. The right to sue does not survive to *A*, and the suit abates, 4 All. 235. See also 1 Agra, 49: the Succession Act, sec. 268: and the Contract Act, sec. 37, supra, vol. I, pp. 460, 570.

Death of one of several plaintiffs or defendants, if right to sue survives.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone[1], or against the surviving defendant or defendants alone[2], the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Death of one of several plaintiffs where right to sue survives to survivors and representative of deceased.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application[3] of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

Where no application made by representative of deceased plaintiff.

364. If within the time limited by law no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Death of sole, or sole surviving, plaintiff.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application[3] of the legal representative[4] of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

Abatement where no application by repre-

366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass

[1] 1 Ben. O. C. J. 42.

[2] 6 Suth. Civ. R. 2.

[3] within 60 days from the date of the plaintiff's death, Act XV of 1887, sched. II, art. 171. Upon the death of a sole plaintiff, if no such application is made, the suit abates. But it may be revived under sec. 371, 5 Cal. 139.

[4] 8 Bom. 241.

an order that the suit shall abate[1], and shall, on the application[2] of the defendant award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff; sentative of deceased plaintiff.

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order[3] as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes[4].

Explanation.—A certificate of heirship[5], or a certificate to collect debts[6], does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property[7].

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit[8]. Dispute as to representative of deceased plaintiff.

368. If there be more defendants[9] than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone, Death of one of several defendants,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives, or of sole, or sole surviving, defendant.

the plaintiff may make an application[10] to the Court,

[1] Such order is appealable, 10 Bom. 220.

[2] within 60 days from the sixtieth day from the date of the plaintiff's death, Act XV of 1877, sched. II, art. 171 A.

[3] Such order is appealable, sec. 588, cl. (18).

[4] 14 Cal. 757.

[5] under Bom. Reg. VIII of 1827: 4 Bom. H. C., A. C. J. 178.

[6] under Act XXVII of 1860: 8 Suth. Civ. R. 1, col. 2.

[7] Notwithstanding sec. 647 infra, secs. 363, 365 and 366 are inapplicable to execution-proceedings. 3 Bom. 221: 3 All. 764, 765: 6 All. 259.

[8] Orders under this section are appealable, sec. 588, cl. (18).

[9] Reading sec. 368 with sec. 582, it is clear that the word 'defendant' in the former section includes a respondent, 7 All. 734, 738: 11 Cal. 694, 696.

[10] within 60 days from the date of the defendant's death, Act XV of 1877, sched. II, art. 171 B.

specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant[1],

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period[2].

Suit not abated by marriage of female party.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree[3].

When plaintiff's

370. The bankruptcy or insolvency of a plaintiff in any

[1] This does not prevent the Court from making (under sec. 32) some other person a party, when he claims, on good *prima facie* evidence, to be the representative of the deceased respondent, 8 Mad. 300.

[2] The provisions of sec. 368 are inapplicable to the case of the death of a judgment-debtor, 6 All. 259.

[3] From the C. L. P. Act, 1852, sec. 141.

suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order[1].

Bankruptcy or insolvency bars suit.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit[2] and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate[3].

Procedure when assignee fails to continue suit or give security.

371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply[4] for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit[5].

Application to set aside abatement or dismissal.

372. In other cases[6] of assignment, creation or devolution of any interest pending the suit[7], the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections[8], if any, be continued by or against the person to whom such interest has come either in addition to or in

Procedure in case of assignment pending suit.

[1] 12 Bom. H. C. 257: 13 Suth. Civ. R. 432.

[2] Orders rejecting applications for dismissal are appealable, sec. 588, cl. (19).

[3] From the C. L. P. Act, 1852, sec. 142, which applies only to actions pending when a bankruptcy or insolvency occurs, *Stanton* v. *Collier*, 23 L. J., Q. B. 116.

[4] within 60 days from the date of the order for abatement or dismissal, Act XV of 1877, sched. II, art 171 c.

[5] 9 Bom. 275. This section does not apply to a case in which a defendant or respondent has died, but to the case only in which the plaintiff or appellant has died or become insolvent, 7 Mad. 196.

Orders refusing to set aside the abatement or dismissal are appealable, sec. 588, cl. (20).

[6] 8 Cal. 847: 9 Bom. 151.

[7] These words relate to a suit in which no final order has been made, 5 Cal 731.

[8] Orders disallowing these objections are appealable, sec. 588, cl. (21).

substitution for the person from whom it has passed, as the case may require[1].

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

373. If, at any time after the institution of the suit, the Court[2] is satisfied on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission[3] on such terms as to costs or otherwise as it thinks fit[4].

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part[5].

Nothing in this section shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others[6].

Limitation law not affected by first suit.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound

[1] This section applies to cases where neither party to the record was alive when the application was made, 8 Cal. 837, p. 848, following 5 Cal. 731. The cases of assignment etc. contemplated are those in which 'the person to whom such interest has come' is on the same side of the suit as 'the person from whom it has passed,' 5 All. 209. As to adding a purchaser *pendente lite* as defendant, see 8 Bom. 323.

[2] whether original or appellate.

[3] 5 All. 595.

[4] The order permitting withdrawal with liberty etc. is not appealable, 6 All. 211.

For cases in which permission has been granted, see 14 Suth. O. J. App. 17: 16 Suth. Civ. R. 100: 17 ibid. 164: 20 ibid. 163: 5 N. W. P. 116: 3 All. 528.

The provisions of sec. 373 are not affected by the Bengal Tenancy Act, VIII of 1885, sec. 37.

[5] But see Bourke, Part VII, p. 162, where the plaintiff withdrew his suit with the defendant's consent, and it was held that he might bring a fresh suit.

[6] This section and section 54 are the only provisions in the Code which justify proceedings analogous to a nonsuit, 9 All. 697.

by the law of limitation in the same manner as if the first suit had not been brought[1].

375. If a suit be adjusted[2] wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit[3], and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction[2]. Compromise of suits.

CHAPTER XXIII.

OF PAYMENT INTO COURT.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim. Deposit by defendant of amount in satisfaction of claim.

377. Notice[4] in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff[5] on his application. Notice of deposit.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the Interest on deposit not allowed to

[1] This rule applies (see sec. 647) to applications for execution, 6 Bom. 681 : 7 All. 359.

[2] An agreement to take an oath at a pagoda by the parties before the suit came to a hearing is not an 'adjustment,' 4 Mad. H. C. 422 : 2 Mad. 356.

[3] 13 Cal. 170. This section provides an alternative and more expeditious course than a separate suit for specific performance, which remedy still remains open to the parties. The matter may be decided on affidavit, 7 Bom. 304, 308, 309, where an reement out of Court, from which one of the parties wished to recede, was enforced on motion under this section; see also 8 Mad. 482. In 11 Cal. 250, however, the Court held that sec. 375 merely covered cases in which all parties consent to have the terms entered into, carried out, and judgment entered up. As to an attorney's power to compromise a suit without his client's consent, see 7 Bom. H. C., O. C. J. 79. As to a vakil's power to admit and assent, 2 Moo. I. A. 253 : 2 N. W. P. 149.

[4] See form, sched. IV, no. 155.

[5] or his agent or pleader, sec. 63, supra.

plaintiff after notice.

receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Where plaintiff accepts deposit as satisfaction in part

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance: and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim[1].

Where he accepts it as satisfaction in full.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(*a*) *A* owes *B* rs. 100. *B* sues *A* for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, *A* pays the money into court. *B* accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) *B* sues *A* under the circumstances mentioned in Illustration (*a*). On the plaint being filed, *A* disputes the claim. Afterwards *A* pays the money into court. *B* accepts it in full satisfaction of his claim. The Court should also give *B* his costs of suit, *A*'s conduct having shown that the litigation was necessary.

(*c*) *A* owes *B* rs. 100 and is willing to pay him that sum without suit. *B* claims rs. 150 and sues *A* for that amount. On the plaint being filed, *A* pays rs. 100 into court and disputes only his liability to pay the remaining rs. 50. *B* accepts the rs. 100 in full satisfaction of his claim. The Court should order him to pay *A*'s costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

When security for costs

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or

[1] This rule qualifies the discretionary power as to costs conferred on the Court by sec. 220, supra

(when there are more plaintiffs than one) that all[1] the plaintiffs are residing[2] out of British India[3], and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs[4] within a time to be fixed by the order, to give security[5] for the payment of all costs incurred and likely to be incurred by any defendant[6].

may be required from plaintiff.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit[7] unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

Effect of failure to furnish security.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380[8].

Residence out of British India.

[1] *D'Hormusgee* v. *Grey*, 10 Q. B. D. 13.

[2] under such circumstances as will afford reasonable probability that the plaintiff or plaintiffs will not[a] be forthcoming when the suit is decided, 3 Bom. 229.

[3] See Act I of 1868, sec. 2 (supra, vol. I, p. 488): 9 Bom. 244.

[4] A substantial, not a mere nominal, plaintiff is meant: see *Belmonte* v. *Aynard*, 4 C. P. D. 221, 352, where a litigant residing in Hamburgh was for mere convenience made plaintiff in an interpleader issue. A defendant cannot be compelled to give security for costs, and this principle applies to a shareholder in a company, resident abroad, who appears to oppose a petition for winding it up, *In re Perry &c. Co.*, 2 Ch. D. 531.

[5] i.e. substantial security, varying in amount according to the requirements of the case, 3 Ch. D. 62.

[6] 14 Cal. 533, even though the defendant also is residing out of British India, 12 Suth. Civ. R. 465, col. 1.

[7] This probably means 'dismiss the suit *as against the defendant or defendants for the payment of whose costs the security was ordered to be given*,' see *Ward* v. *Ward*, 11 Beav. 159. The Court should first see that notice of the order requiring security has been served on the plaintiff or his pleader, 5 Mad. 265.

[8] Security for costs may also be required where the plaintiff is a limited company with insufficient assets, see Act VI of 1882, sec. 93, = 25 & 26 Vic. c. 89, sec. 69.

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[a] The judgment (by an obvious clerical error) and the headnote (inadvertently) omits 'not'.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to Examine Witnesses.

Cases in which Court may issue commission to examine witness.

383. Any Court may[1] in any suit issue a commission[2] for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court[3], or who are from sickness or infirmity unable to attend it[4].

Order for commission.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined[5].

Witness residing in Court's jurisdiction.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose examination commission may issue.

386. Any Court may in any suit issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(*c*) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within

[1] in its discretion, 1 Hyde, 68: but see 15 Suth. Civ. R. 447, where Ainslie J. said that the Court should issue a commission as a matter of course.

[2] See form, sched. IV, no. 156.

[3] The High Court has refused a commission to examine a Hindú widow aged eleven, 2 Hyde, 152.

[4] As to the precedure in the case of prisoners, see Act XV of 1869, secs. 12-14.

In England and probably in India a Court of Equity has inherent jurisdiction to issue a commission to take evidence *de bene esse*, 5 Ben. 253 note.

[5] That the Court should grant its assistance as a matter of course, see 8 Ben. Appx. 17. But the commission should not issue without notice to the opposite party, 3 Suth. Civ. R. 147, 150.

the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission [1]. Witness residing out of British India.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto. Court to examine witness.

389. After the commission has been duly executed[2], it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return[3] thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit. Return of commission with depositions.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless When depositions may be read in evidence.

(*a*) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined[4], or exempted from personal appearance in Court, or

(*b*) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorises the evidence of any person being read

[1] 2 Ben A. C. J. 73.

[2] That the Commissioner must administer the oath to himself as well as to the interpreter (if any), and that attorneys may not cross-examine before a Commissioner appointed by a High Court, see 8 Ben. Appx. 101.

[3] This should show, 1°, that the oath above mentioned was duly administered, 2°, that the evidence was duly recorded, 14 Suth. Civ. R. 269, and, 3°, that it was taken within the period allowed.

[4] 1 Wm. IV, c. 22, sec. 10. It is enough if it appears from the deposition itself that the deponent is 'beyond the jurisdiction,' etc., 11 Bom. H. C. 132

as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(*a*) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(*b*) Courts situate in any part of the British Empire other than British India, or

(*c*) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for Local Investigations.

Commission to make local investigations.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute[1], or of ascertaining the market-value of any property, or the amount of any mesne profits, or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may[2] issue a commission[3] to such person as it thinks fit, directing him to make such investigation[4] and to report thereon to the Court:

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules[5].

Procedure of Commissioner.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court[6].

[1] such as the physical features of the place in dispute, the identification of land depicted in maps with parcels the subject of the suit, the identification of maps with one another by the aid of objects found on the land, 4 Ben. Appx. 34.

[2] in its discretion, 4 Cal. 718.

[3] See form, sched. IV, no. 157.

[4] Notice should be given to the parties of the time when the investigation will be made, 12 Suth. Civ. R. 139, 140.

[5] See *Calcutta Gazette*, 5 Oct. 1881, Part I, p. 915: *N. W. P. and Oudh Gazette*, 10 Jan. 1880, p. 10.

[6] As to fixing a day to hear objections and giving notice to the parties, see 21 Suth. Civ. R. 2.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence[1] in the suit[2] and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him[3] or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

C.—Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission[4] to such person as it thinks fit directing him to make such examination or adjustment[5].

Commission to examine or adjust accounts.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

Court to give Commissioner necessary instructions.

The proceedings of the Commissioner[6] shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite[7].

Court to receive Commissioner's proceedings or direct further inquiry.

[1] not *conclusive* evidence, 17 Suth. Civ. R. 270.

[2] And it is sufficient evidence to support a decree if it be believed by the Court, 6 Suth. Civ. R. 51, per Peacock C.J. As to the weight to be attached to such reports, see 3 Suth. Civ. R. 219.

[3] 24 Suth. Civ. R. 342, where the report was defective.

[4] See form, sched. IV, no. 157.

[5] This section and sec. 395 should be resorted to when the taking of accounts by the Judge would occasion waste of public time, 6 Cal. 758. It is not necessary that the consent of the parties should be obtained (L. R., 1. I. A. 362), or that the Commissioner should be sworn or affirmed, 3 N. W. P. 232, 233.

As to the procedure in taking accounts, see 6 Cal. 754: 7 Cal. 654, 657. As to the power of the Registrar of the High Court to do acts which may be done by a Commissioner under this section, see sec. 637 infra.

[6] As to the general nature of his certificate or report, see 3 Bom. 161, 167.

[7] While the Commissioner's repor should have very great weight given to it, and not be capriciously deviated from, it is not absolutely binding, 6 Mad. H. C. 36, modifying the decisions in 1 Mad. H. C. 1 and 418, and see 6 Bom. H. C., A. C. J. 140. But

D.—Commission to make Partition.

Commission to make partition of non-revenue-paying immoveable property.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons[1] as it thinks fit to make a partition according to such rights.

Procedure of Commissioners.

The Commissioners[1] shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties[2], and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares[3].

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith[4].

E.—General Provisions.

Expenses of commission to be paid into court.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be

when the Commissioner was empowered by consent of parties to decide on all questions of fact, see L. R., 1 I. A. 346.

[1] As the plural includes the singular (Act I of 1868, sec. 2, cl. 2), Pontifex J. held that there may be only one Commissioner, 7 Cal. 318. But the clause referred to does not operate where there is any repugnancy in the context, and the third paragraph of sec. 396 clearly intends that there shall be at least two Commissioners.

[2] In Bengal the Commissioners should follow as far as possible the rules laid down in Ben. Reg. XIX of 1814, 17 Suth. Civ. R. 137.

[3] The principle in these cases is that, if the property can be divided without destroying the intrinsic value of the whole property, or of the shares, such division ought to be made. If, on the contrary, no division can be made without destroying the intrinsic value, then a money compensation should be given, 10 Cal. 676.

[4] 12 Cal. 209. Orders under sec. 396 are appealable, 12 Cal. 273, 275.

fixed by the Court, paid into court by the party at whose instance or for whose benefit the commission is issued[1].

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment, Powers of Commissioners.

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of inquiry;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India. Attendance etc. of witnesses before Commissioner.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders. Court to direct parties to appear before Commissioner.

If the parties do not so appear[2] the Commissioner may proceed *ex parte*[3]. Procedure *ex parte*.

[1] The remuneration of a Commissioner appointed to examine accounts should, as a rule, be a definite amount and not a monthly allowance. The Code does not seem to authorise the dismissal of a suit on refusal or failure of a party to pay the sum ordered under sec. 397. 3 Mad. 259. And it has been decided in Calcutta (Bourke, O. C. J. 24) that the Commissioners under a commission to make partition have no lien on the return for their fees. See *Young* v. *Sutton*, 2 V. & B. 365.

[2] 6 Suth. Civ. R. 130.

[3] Marshall, 139.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

Suits may be brought *in formâ pauperis.*

401. Subject to the following rules, any suit may be brought[1] by a pauper.

Explanation.—A person is a 'pauper' when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit[2].

What suits excepted.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

Application to be in writing. Contents of application.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Presentation of application.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the ap-

[1] The Court may allow a suit not originally instituted *in formâ pauperis* to be continued *in formâ pauperis*, 8 Bom. 615, following 2 Cal. 130.

[2] which is presumably out of his reach and cannot be used by him to carry on his litigation, 10 Bom. 207. An executor or administrator may therefore sue as a pauper, 7 Mad. 390, and see 3 Suth. Misc. 20. Otherwise in England, Wms. Exors., 8th ed., 1938. A minor may sue *in formâ pauperis* by his next friend, whether such next friend is a pauper or not, 3 Mad. 3: 11 Ben. 373. But in England see *Lindsey* v. *Tyrrell*, 24 Beav. 124, 2 De G. and J. 7. The Court should not require a person applying for leave to sue as a pauper to raise money by mortgaging his claim, 3 Mad. 249.

plicant in person[1], unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorised agent[2] who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it. Rejection of application.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant. Examination of applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code. Power to order applicant to be examined by commission.

407. If it appear to the Court Rejection of application.

(*a*) that the applicant is not a pauper, or

(*b*) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or

(*c*) that his allegations do not show a right to sue in such Court[3], or

(*d*) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter[4],

the Court shall reject the application[5].

[1] 10 Mad. 193: 4 Bom. H. C., A. C. J. 91.

[2] who may be a pleader, 15 Suth. Civ. R. 198: 21 ibid. 308.

[3] The Court should not merely ascertain whether the 'right to sue' arose within its jurisdiction: the applicant must show that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the Limitation Act or any other law, 7 All. 664.

[4] See an illustration, 9 Bom. 371.

[5] The Code does not direct the application to be refused when the Court

Notice of day for receiving evidence of applicant's pauperism.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Procedure at hearing.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court [1] shall examine [2] the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence [3].

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper [4].

Procedure if application admitted.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit [5].

is not satisfied of the existence of merits, 4 Mad. 323. The order rejecting the application is not appealable, 1 All. 745, and see 7 Suth. Civ. R. 416, col. 2: 24 ibid. 62. But it may in proper cases be revised by the High Court under sec. 622, 7 All. 661, or reviewed under sec. 623, 4 Bom. 414.

[1] i.e. the Judge himself, 1 Bom. H. C. 102.

[2] on any grounds mentioned in sec. 407, not merely as to the question of pauperism, 14 Suth. Civ. R. 281: 11 Ben. Appx. 2.

[3] So much of this section as relates to the making of a memorandum does not apply to the High Courts or the Chief Court of the Panjáb in the exercise of original civil jurisdiction, sec. 638 infra, and Act XVIII of 1884, sec. 66.

[4] An order made under this section refusing leave to sue as a pauper is reviewable under sec. 623, 4 Bom. 414.

[5] But he must pay the stamp duty and penalty (if any) due in respect of a document on which he relies, 10 Suth. Civ. R. 357.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit[1], and shall also be recoverable by the Government[2] from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code[3].

Costs when pauper succeeds.

Recovery of court-fees.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court[4] shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper[5];

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both[6].

Procedure when pauper fails.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue[7]; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in

Dispaupering.

[1] 1 Bom. 7: 2 All. 196.

[2] but subject to the limitation-law as to applications, 4 Mad. 155: 7 Bom. 552: 22 Suth. Civ. R. 512.

[3] An appeal lies from an order given by an application on behalf of the Government under this section, 9 All. 64.

[4] having jurisdiction to try the suit, 6 Bom. 590.

[5] But see 6 Bom. 590.

[6] The plaintiff, moreover, may, under sec. 220, be ordered to pay the costs of a successful defendant, 8 Bom. 577.

[7] This does not bar a subsequent application where the former one is dismissed in default of prosecution, 5 Ben. Appx. 29; or is struck off 'for the present' for default by non-appearance, 4 Agra Misc. App. 1; or is returned to have the question of pauperism tried by a court of concurrent jurisdiction, 6 N. W. P. 225.

writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(*a*) if he is guilty of vexatious or improper conduct in the course of the suit;

(*b*) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(*c*) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

Costs.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit[1].

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by or against Secretary of State in Council.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council[2].

Persons authorised to act for Government.

417. Persons being *ex officio* or otherwise authorised to act for Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Plaints in suits by Secretary of State in Council.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words 'The Secretary of State for India in Council.'

Agent for Govern-

419. The Government Pleader in any court shall be the

[1] Though this chapter provides only for suits to be brought by a pauper, the Courts had always as Courts of Equity power to allow a defendant to defend *in formâ pauperis*; and this power is not taken away by the Code, 5 Cal. 819.

[2] 4 Mad. 344: 6 Bom. 670, 672 (amendment). As to the period of limitation for suits by or on behalf of the Government, see infra, Act XV of 1877, sched. II, no. 149. That a judgment debt due to the Crown or the Secretary of State in Council is entitled to precedence in execution, see 5 Bom. H. C., O. C. J. 23.

The Government must be sued where the cause of action has arisen, 1 Mad. H. C. 286: 1 Hyde 37, 41.

agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such court.

ment to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officers.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

Extension of time to enable officer to refer to Government.

and the Court upon such application may extend the time for so long as appears to be requisite.

424. No suit shall be instituted[1] against the said Secretary of State in Council, or against a public officer[2] in respect of an act purporting to be done by him in his official capacity[3]

Notice previous to suing Secretary

[1] This does not prevent the Court from adding (under sec. 32) the Secretary of State in Council as a party, 9 Cal. 277.

[2] 3 All. 20 (Collector acting as agent of Court of Wards), and see 1 Bom. 218. But a názir appointed guardian *ad litem* of a minor is not a 'public officer,' 4 Bom. 638.

[3] The cases in which notice to a public officer is required by this section are only those in which he is sued for damages for some wrong inadvertently or ignorantly committed by him in the discharge of his official duties, 7 Cal. 499, citing *Attorney*

of State in Council or public officer.

until the expiration of two months[1] next after notice in writing[2] has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left[3].

Arrests in such suits.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Application where Government undertakes defence.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

Procedure where no such application made.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Exemption of public officers from personal appearance.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Procedure where decree against Government or public officer.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it

General v. *Hackney Local Board*, L. R., 20 Eq. 626, and *Theobald* v. *Crichmore*, 1 B. & Ald. 227. No such notice need be given in a suit for breach of a specific contract.

[1] Exclusive of the days of serving the notice and of instituting the suit, vid. supra, vol. I, pp. 487, 489, and *Young* v. *Higgon*, 6 M. & W. 49.

[2] See 7 Suth. Civ. R. 92, a case under Ben. Act III of 1864, sec. 77.

[3] As to the object of such provisions, see 8 Bom. 421.

remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

When aliens may sue.

430. Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty[1].

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue.

431. A foreign State may sue in the Courts of British India, provided that—

(*a*) it has been recognised by Her Majesty or the Governor General in Council, and

(*b*) the object of the suit is to enforce the private rights[2] of the head or of the subjects of the foreign State[3].

[1] As to prisoners of war see *Spareshurgh* v. *Bannatyne*, 1 Bos. & P. 163: *Maria* v. *Hall*, 2 ibid. 236.

[2] These rights 'do not mean individual rights as opposed to those of the body politic or State, but those private rights of the State which must be enforced in a Court of justice, as distinguished from its political or territorial rights which must, from their very nature, be made the subject of arrangement between one State and another. They are rights which may be enforced by a foreign State against private individuals, as distinguished from rights which one State in its political capacity may have as against another State in its political capacity,' 11 Calc. 24, per Garth C. J., who adds that the rule laid down in section 431 is only an enactment of that which prevails in England. See *Emperor of Austria* v. *Day*, 30 L. J., Ch. 690, 2 Giff. 628: *United States* v. *Wagner*, L. R., 2 Ch. App. 582.

[3] In England, where a foreign Government is plaintiff, the Court

The Court shall take judicial notice of the fact that a foreign State has not been recognised by Her Majesty or by the Governor General in Council.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief[1], whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief[2].

Suits against Sovereign Princes, etc.

433. Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of Government certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court[3].

Such consent shall not be given unless—

(*a*) the Prince, Chief, ambassador or envoy has instituted a suit in such Court against the person desiring to sue him; or

(*b*) the Prince, Chief, ambassador or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court; or

(*c*) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador or envoy[4].

Sovereign Princes etc. exempt from arrest.

No such Prince, Chief, ambassador or envoy shall be arrested under this Code; and no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy unless with consent of Government certified as aforesaid[5].

will stay proceedings in the action until such Government names a proper person to make discovery, *Republic of Costa Rica* v. *Erlanger*, 1 Ch. D. 171: *Republic of Peru* v. *Weguelin*, L. R., 20 Eq. 140.

[1] As to the meaning of 'ruling chief,' see 1 Bom. 418.

[2] This section does not, of course, prevent a prince or chief from suing in his own name, or through a recognised agent other than one appointed hereunder, 10 Cal. 136.

[3] 9 Cal. 535 (Rájá of Hill Tipperah).

[4] A suit for maintenance, which seeks to have the maintenance made a charge on immoveable property, does not fall within this clause, 9 Cal. 535.

[5] As to the privilege of an independent sovereign prince from suit in the courts of British India, see 7 Bom. H. C., O. C. J. 150.

434. The Governor General in Council may from time to time, by notification in the *Gazette of India*,

Execution in British India of decrees of Courts of Native States.

(*a*) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India[1], and

(*b*) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly[2].

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorised to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Subscription and verification of plaint.

436. When the suit is against a Corporation, or against a Company authorised to sue and be sued in the name of an officer or of a trustee, the summons may be served—

Service on Corporation or Company.

(*a*) by leaving it at the registered office (if any) of the Corporation or Company, or

(*b*) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(*c*) by giving it to any director, secretary or other principal officer of the Corporation or Company;

[1] Notifications under the corresponding section of Act X of 1877 have been issued as to the decrees of the Courts of Kuch Bihár and Mysore, Macpherson, *Lists*, 1884, p. 57.

[2] The limitation-law applicable to execution-proceedings under this section (which should be transferred to chap. xlix) is the law which would be applicable thereto if the decree had been made by a Court in British India, 14 Cal. 570. As to suits on foreign judgments in Indian Courts, see 6 Mad. 191, supra p. 393

and the Court may require the personal appearance[1] of any director, secretary or other principal officer[2] of the Corporation or Company who may be able to answer material questions relating to the suit[3].

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representation of beneficiaries in suits concerning property vested in trustees, etc.

437. In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person[4], the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit[5]. But the Court may, if it thinks fit, order them or any of them to be made such parties[6].

Joinder of executors and administrators.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of married executrix.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

[1] See sec. 107 supra.

[2] An executive engineer of a railway company is not a 'principal officer,' 1 Hyde, 197.

[3] This would apply to a foreign corporation having a place of business and trading in British India, its chief officer in British India being for the purpose of this section a 'principal officer.' See *Newby* v. *Von Oppen*, L. R., 7 Q. B. 293. As to service on other foreign corporations, see above, sec. 89, note. As to the delivery of interrogatories to members and officers of litigant corporations and companies, see sec. 124, supra. As to the remedies against a corporation, see supra, p. 425.

[4] i.e. between the beneficiaries on the one hand and a stranger on the other, *Hamond* v. *Walker*, 3 Jur. N. S. 686.

[5] In England, where beneficiaries are made parties unnecessarily, their costs are disallowed, *Re Cooper*, 20 Ch. D. 611.

[6] Taken from 15 and 16 Vic. c. 86, 42, r. 9. Compare the English Order xvi. r. 8. The beneficiaries should be made parties when the trustees are wholly uninterested or have any interest adverse to that of the beneficiaries. See L. R., 3 Eq. 373: L. R., 1 Ch. App. 327. In suits against the legal representative of a deceased debtor it is unnecessary to prove that assets have come to his hands. It is sufficient if there are assets of which he may become possessed, 8 Bom. 309. As to execution, see sec. 252 supra.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND[1].

440. Every suit by a minor[2] shall be instituted[3] in his name by an adult person[4], who in such suit shall be called the next friend of the minor[5], and may be ordered to pay any costs in the suit[6] as if he were the plaintiff[7]. Minor to sue by next friend. Costs.

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit. Applications on minor's behalf.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit[8]. Plaint filed without next friend. Costs.

443. Where the defendant to a suit is a minor[9], the Court[10], Guardian *ad litem*

[1] 14 Cal. 209, 210.

[2] See the Majority Act, IX of 1875. That the rules in Chap. xxxi must be strictly followed, see 5 Cal. 453.

[3] Subject to the law of limitation applicable to the minor, 7 Cal. 137: 4 Mad. 119.

[4] He should not be an officer of the Court, at least if he may have a direct personal interest either in the institution or the conduct of the suit, 3 Moo. I. A. 329, 345.

[5] No one can be made a next friend without his consent, sec. 32 supra.

[6] This is the principal reason for appointing a next friend. The costs will be allowed out of the infant's estate, provided the next friend has acted properly. He is not a party, and no decree can be passed against him personally, 15 Suth. Civ. R. 192.

[7] This section must, where Act XL of 1858 is in force, be read together with sec. 3 of that Act, 10 Cal. 102, 134. Where a suit is brought in violation of the rules in these sections, the Court should return the plaint in order that the error may be rectified, 10 Cal. 102. The form in which the plaintiff should sue may be, '*A*, the minor son of *B* deceased, by his mother and next friend *C*,' &c. But see 14 Cal. 159. In 5 Mad. H. C. 435, the High Court held that where an infant sued without a next friend, advantage of the point 'must be taken by plea or objection.' As to suits by minors in Presidency Small Cause Courts, see Act XV of 1882, sec. 32, and as to suits on behalf of Government wards in the Central Provinces, Act XVII of 1885, sec. 22.

[8] This section 'refers to a case where, on the face of the plaint, it appears that it was filed by a person who was a minor. It does not contemplate any enquiry into the question of minority,' 13 Cal. 189.

[9] Where he is an European British subject not domiciled in British India, see 7 All. 490.

[10] 5 Mad. H. C. Appx. viii.

to be appointed by Court.

on being satisfied of the fact of his minority, shall appoint a proper person[1] to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case[2].

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

Order obtained without next friend or guardian.

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Costs.

Who may be next friend.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Removal of next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement of next friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a

[1] See secs. 456, 457 infra.

[2] This does not empower the Court to appoint a person against his will, 5 Bom. 306. And of course before the Court appoints there must be a suit in which the minor is a defendant 11 Cal. 405. The want of a formal order appointing guardians *ad litem* is not necessarily fatal to the suit, 14 Cal. 204, 214. But see ibid. 754. The section only empowers the guardian to act on behalf of the minor defendant in the *conduct* of the case. It should declare expressly that service on the guardian shall be deemed good service on the minor. See the English Order ix. r. 4, and 14 Cal. 204, 215, per Wilson J.

fit person to be put in his place, and giving security for the costs already incurred..

The application for the appointment of a new next friend shall be supported by affidavit[1] showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Application for appointment of new next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceedings on death etc. of next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Application for appointment of new next friend.

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Election by minor plaintiff on coming of age.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Where he elects to proceed.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:

'*A. B.*, late a minor, by *C. D.*, his next friend, but now of full age.'

452. If he elects to abandon the suit or application[2], he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Where he elects to abandon. Costs.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

Applications under ss. 451, 452.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out

When minor co-plaintiff

[1] 5 Beav. 31.

[2] on any grounds, apparently, other than those mentioned in sec. 455.

coming of age desires to repudiate suit.

as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Costs.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs[1].

If the late minor be a necessary party to the suit the Court may direct him to be made a defendant.

When suit unreasonable or improper.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper[2], he may, if a sole plaintiff, apply to have the suit dismissed.

Costs.

Notice of the application shall be served on all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit[1].

Petition for appointment of guardian *ad litem.*

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: provided that he has no interest adverse to that of the minor[3].

Who may be guardian *ad litem.*

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest ad-

[1] Orders under sec. 454, 455, or 458 directing a next friend or guardian *ad litem* to pay costs are appealable, sec. 588, cl. (22), infra.

[2] 4 Maddock, 461.

[3] 14 Cal. 214, 215. No one can be appointed guardian *ad litem* against his will, 5 Bom. 306.

verse to that of the minor; but neither a plaintiff, nor a married woman[1], can be so appointed.

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty[2].

Removal of guardian.

Costs.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Death of guardian *pendente lite.*

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Guardian *ad litem* of minor representative of deceased judgment-debtor.

461. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Before decree, next friend not to receive money etc. without leave.

462. No next friend or guardian for the suit shall, without the leave of the Court[3], enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Next friend not to compromise without leave.

Any such agreement or compromise entered into without the leave of the Court[4] shall be voidable against all parties other than the minor[5].

Compromise without leave voidable.

[1] 11 Cal. 733.

[2] 8 Bom. 391. This is the only case in which the Court can decree costs against the guardian of a defendant, 3 Mad. 263. So far as regards costs, this section does not apply to a person appointed to act as guardian *ad litem* without his previous assent, 5 Bom. 306.

[3] i.e. its express sanction, 3 Mad. 103: 9 Cal. 810, not given under fraudulent misrepresentation of material facts, 6 Cal. 687.

[4] This impliedly requires the Court to consider whether the proposed compromise shall be sanctioned. Passing a decree embodying the alleged compromise is not a substantial compliance with section 462.

[5] See 6 Cal. 687: 10 Cal. 357.

Application of ss. 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force[1].

Wards of Court.

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law[2].

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them

465. When any officer or soldier actually serving the Government in a military capacity[3] is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (*a*) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (*b*) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression 'commanding

[1] A guardian *ad litem* cannot therefore be appointed for a defendant of unsound mind to whom Act XXXV of 1858 applies, until the latter is adjudged a lunatic under that Act, 6 Mad. 380.

The Code should expressly provide that service on the committee etc. of the lunatic, or the person with whom he resides, or under whose care he is, shall, unless the Court otherwise orders, be deemed good service on the lunatic. See the English Order ix. r. 5

[2] e. g. Acts XL of 1858 and XX of 1861.

[3] As to non-commissioned officers, or soldiers, in civil employ and outside cantonments, see 14 Suth Civ. R. 231

officer' means the officer in actual command for the time being of any regiment, corps, detachment or depôt to which the officer or soldier belongs[1].

466. Any person authorised by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier[2]

Person so authorised may act personally or appoint pleader.

467. Processes served upon any person authorised by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Service on person so authorised, or on his pleader.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him[3].

Service on officers and soldiers.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station or military bázár, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

Execution of process in cantonments, etc.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

[1] See Act V of 1869.

[2] Where a widow, without any written authority, sued on behalf of her son, a sepoy who was absent on military service beyond the local limits, it was held that the defect of jurisdiction could not be cured by producing a written authority in the Court of second appeal, 6 Bom. H. C., A. C. J. 20.

[3] 10 Mad. 319. As to proof of service, 9 Ben. Appx. 43.

CHAPTER XXXIII.

INTERPLEADER.

When interpleader suit may be instituted.

470. When two or more persons claim adversely to one another the same payment or property[1] from another person, whose only interest therein is that of a mere stakeholder[2] and who is ready to render it to the right owner[3], such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

Plaint in such suit.

471. In every suit of interpleader the plaint must, in addition to the other statements necessary for plaints[4], state—

(*a*) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants[5].

Payment of thing claimed into Court.

472. When the thing claimed is capable of being paid into court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing.

473. At the first hearing the Court may—

(*a*) declare that the plaintiff is discharged from all liability

[1] This probably means only *moveable* property.

[2] It has been held in England that a lien for charges and costs is not such an interest in the subject-matter as to deprive the stakeholder of his right to relief, *Best* v. *Hayes*, 1 H. & C. 718; see, too, *Attenborough* v. *St. Katharine's Dock Co.*, 3 C. P. D. 450, where the stakeholder had issued dock-warrants for the property, and *Tanner* v. *European Bank*, L. R., 1 Ex. 261, where he was under a special contractual obligation to one of the defendants.

[3] This assumes that the stakeholder is in possession, see *Burnett* v. *Anderson*, 1 Mer. 405.

[4] See sec. 50 supra, pp. 493-494.

[5] As to what is collusion in a stakeholder, see *Thompson* v. *Wright*, 13 Q. B. D. 632.

to the defendants in respect of the thing claimed, award him his costs [1], and dismiss him from the suit;

or, if it thinks that justice or convenience so require,

(*b*) retain all parties until the final disposal of the suit;

and, if it finds that the admissions of the parties or other evidence enable it,

(*c*) adjudicate the title to the thing claimed: or else it may

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims [2].

474. Nothing in this chapter shall be taken to enable agents to sue their principals [3], or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords [4]. When agents and tenants may institute interpleader-suits.

Illustrations.

(*a*) *A* deposits a box of jewels with *B* as his agent. *C* alleges that the jewels were wrongfully obtained from him by *A*, and claims them from *B*. *B* cannot institute an interpleader-suit against *A* and *C*.

(*b*) *A* deposits a box of jewels with *B* as his agent. He then writes to *C* for the purpose of making the jewels a security for a debt due from himself to *C*. *A* afterwards alleges that *C*'s debt is satisfied, and *C* alleges the contrary. Both claim the jewels from *B*. *B* may institute an interpleader-suit against *A* and *C*.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way. Charge of plaintiff's costs.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court Procedure where defendant is suing stakeholder.

[1] The stakeholder has his costs out of the fund [see sec. 475, infra], and the defendant in the wrong has then to indemnify the defendant entitled to the fund, *Laing* v. *Zeden*, L. R., 9 Ch. App. 738, per James L.J.

[2] Orders under this section, clause (*a*), (*b*) or (*d*), are appealable, sec. 588, cl. (23), infra.

[3] But see *Swart* v. *Welch*, 4 My. & Cr. 305, 320, where there was doubt as to who was the stakeholder's principal.

[4] *Clarke* v *Byne*, 13 Ves. 383

which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him [1]; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit [2].

Costs.

[1] That the stakeholder may in his interpleader-suit obtain an injunction to stay proceedings against him, see *Prudential Assurance Co.* v. *Thomas*, 3 Ch. App. 74.

[2] Orders under this section are appealable, sec. 588, cl. (23), infra,

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT [1].

A.—Arrest before Judgment.

When plaintiff may apply that security be taken.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit [2],

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(*a*) has absconded or left the jurisdiction of the Court, or

[1] See infra, sec. 648.

[2] 2 N.W.P. 358: 14 Cal. 695, 700.

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant[1] to arrest the defendant and bring him before the Court to show cause[2] why he should not give security for his appearance[3].

If defendant fail to show cause, Court may order him to make deposit or give security.

479. If the defendant fail to show such cause, the Court shall order[4] him either to deposit in court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant, pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security[5].

Procedure where defendant fails to

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against

[1] See form, sched. IV, no. 158.

[2] See 1 Ind. Jur. N. S. 294.

[3] If a creditor, without reasonable or probable cause, procures his debtor to be arrested, or his property to be attached, on mesne process, he inflicts an injury for which he must make compensation, 1 N.W. P. 91.

[4] Such orders are appealable, sec. 588, cl. (24), infra.

[5] Orders under this section are appealable, sec. 588, cl. (24).

the defendant, until the execution of the decree[1]: provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

give security or find fresh security.

Provided that no person shall be detained in prison under this section after he has complied with such order.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

Subsistence of defendants arrested.

B.—Attachment before Judgment.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

Application before judgment for security from defendant to satisfy decree,

(*a*) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(*b*) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court[2] shall be attached until the further order of the Court.

and in default for attachment of property.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

Contents of application.

484. If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit[3], or that

Court may call on defendant to furnish security or show cause.

[1] See form of order, sched. IV, no. 159.

[2] Sections 483, 484 warrant the attachment before judgment only of property within the jurisdiction of the Court, 8 Bom. H.C., O.C.J. 29: 8 Ben. 335: 8 Mad. 20.

[3] See 2 Hyde, 183, where the suit had not been actually commenced.

he has with such intent quitted the jurisdiction of the Court, leaving therein[1] property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security[2] in such sum as may be specified in the order[3], to produce and place at the disposal of the Court, when required, the said property or the value of the sum, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause[4] why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

Attachment if cause not shown or security not furnished.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order[5] that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached[6].

Withdrawal of attachment.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn[7].

Mode of making attachment.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money[8].

Investigation of claims to property attached before judgment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore[9] provided for the investigation of claims to property attached in execution of a decree for money.

[1] See note 2, p. 651.

[2] 5 Bom. 643.

[3] See form, sched. IV, no. 160.

[4] This may be done after security had been furnished, 5 Bom. 643.

[5] See form, sched. IV, no. 161.

[6] This section does not enable a provincial Court of Small Causes to attach *immoveable* property, see infra sched. II, following, in this respect, 6 Mad. H. C. 91.

[7] Orders under this section are appealable, sec. 588, cl. (24).

[8] See forms, sched. IV, nos. 142, 162–165.

[9] Sec. 278 supra, p. 575, and see 2 Hyde, 22.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment[1], of persons not parties to the suit[2], nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree[3].

Saving of rights of strangers and decree-holders.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Property attached under chap. 34 not to be re-attached.

C.—Compensation for improper Arrests or Attachments.

491. If in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court[4] may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment:

Compensation for obtaining arrest or attachment on insufficient grounds.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment[5].

[1] As to these words (suggested by the case in 2 Bom. H. C., A. C. J. 146) see 10 Cal. 150, where the opinion of the minority (Garth C.J. and Mitter J.) seems correct.

[2] 1 N. W. P. 185.

[3] 6 Mad. H. C. 135.

[4] i.e. the Court disposing of the case, 3 Suth. Misc. 28.

[5] 21 Suth. Civ. R. 375. As to such suits see 2 N. W. P. 353; 4 N. W. P. 42.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions[1].

Cases in which temporary injunction may be granted.

492. If in any suit it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger[2] of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(*b*) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors[3],

the Court[4] may by order[5] grant a temporary injunction to restrain such act[6], or give such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order[7].

Injunction to restrain repetition or continuance of breach.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract[7] or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right[8].

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an

[1] As to perpetual injunctions, see the Specific Relief Act, supra, vol. I.

[2] As, for instance, when the defendant in a suit for a specific sum of money expresses his intention of employing it in trade, 13 Suth. Civ. R. 95.

[3] 9 All. 497.

[4] i e. the Court actually trying the suit, 2 Bom. H. C, A. C. J. 98. When an appeal is presented its power seems to cease, 11 Cal. 149.

[5] See form, sched. IV, no. 166. Orders under this section are appealable, sec. 588, cl. (24).

[6] See an illustration, 14 Ben. 352.

[7] 7 All. 550: 12 Cal. 515. Apart from the special circumstances which determine whether the Court should, in its discretion, grant an injunction before the hearing of the suit, the same general principles must equally apply to the granting of a temporary injunction as to a perpetual injunction, and those principles must, therefore, be sought in the Specific Relief Act, [supra, vol. I, pp. 983—990], 6 Bom. 279.

[8] See the English Order l. r. 12.

account, giving security, or otherwise, as the Court thinks fit, or refuse the same[1].

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both[2].

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice[3] of the application for the same to be given to the opposite party[4].

Before granting injunction, notice to opposite party.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Injunction to Corporation binding on its members and officers.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order[5].

Order for injunction may be discharged or varied.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award

Compensation for issue of injunction on insufficient grounds.

[1] Orders under this section are appealable, sec. 588, cl. (24).

[2] *De La Rue* v. *Fortescue*, 2 H. & N. 324.

[3] See form, sched. IV, no. 167.

[4] That a case of irremediable mischief impending must be made out before an *ex parte* injunction will be granted, see 2 Tayl. & B. 25, per Peel, C. J.

[5] Orders under this section are appealable, sec. 588, cl. (24).

against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction:

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award[1] under this section shall bar any suit for compensation in respect of the issue of the injunction[2].

B.—Interlocutory Orders.

Order for interim sale of perishable articles.

498. The Court may, on the application of any party to a suit[3], order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay[4].

Order for detention etc. of subject-matter,

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(*a*) make an order for the detention, preservation[5] or inspection of any property being the subject of such suit;

and to authorise entry,

(*b*) for all or any of the purposes aforesaid, authorise any person to enter upon or into any land or building in the possession of any other party to such suit, and

taking of samples and experiments.

(*c*) for all or any of the purposes aforesaid, authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence[6].

The provisions hereinbefore contained as to execution of

[1] This does not, of course, include a denial of compensation.

[2] Orders under this section are appealable sec. 588, cl. (24).

[3] The application can be made only after service of summons on defendant and reasonable notice in writing of the intention to apply, 7 Mad. 241.

[4] This refers only to things like fruit, meat, milk, vegetables. Under the corresponding English rule (Order l. r. 2) the sale of a horse has been ordered, 3 C.P.D. 316.

[5] e.g. to continue pumping water out of a mine, *Strelly* v. *Pearson*, 15 Ch. D. 113.

[6] Under the corresponding English rule (Order l. r. 3) an order was made giving the plaintiff liberty, before the hearing, to enter on the defendant's land, and dig up soil for the purpose of discovering a drain, the subject of the action, *Lamb* v. *Beaumont*, 53 L. J., Ch. 1111.

process shall apply, *mutatis mutandis*, to persons authorised to enter under this section.

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

Application for such orders to be after notice.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land and tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court) be put in immediate possession of the land or tenure;

When party may be put in immediate possession of land the subject of suit.

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in court[1] or delivered to such last-named party, with or without security, subject to the further direction of the Court[2].

Deposit of money etc. in Court.

[1] A defendant ordered to deposit money due, and failing to do so, is liable to pay interest from the date of the order, 16 Suth. Civ. R. 297.

[2] Orders under this section are appealable, sec. 588, cl. (24).

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

Power of Court to appoint Receivers.

503. Whenever it appears to the Court to be necessary for the realisation, preservation or better custody or management of any property, moveable or immoveable, the subject of a suit[1], or under attachment, the Court may by order[2]—

(*a*) appoint a Receiver of such property,

and, if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(*c*) commit the same to the custody or management of such Receiver; and

(*d*) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing[3] and defending suits, and for the realisation, management[4], protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has[5], or such of those powers as the Court thinks fit[6].

[1] A receiver may be appointed after decree, where this course is necessary or proper, 8 Mad. 229, 233.

The application for an order under sec. 503 should state the facts fully, Fulton, 90.

[2] See form, Sched. IV, no. 168, 11 Cal. 496. Mere refusal to make such order is not appealable, 6 Mad. 356. Otherwise in case of a refusal to remove a receiver, 5 Bom. 45.

The discretion given to High Courts and District Courts (sec. 505) by this section should be used with the greatest care and caution. And a *bona fide* possessor should not be deprived of any of the just rights attached to his title unless there be some equitable ground for interference, 5 All. 561, citing Story, Eq. Jur.

[3] The Court may authorise a receiver to sue in his own name, 10 Cal. 733.

[4] The receiver may employ servants and pay their wages in full out of the assets; but they have no preferential claim over an attaching creditor for wages due before the receiver's appointment, 6 Mad. 138.

[5] i.e. has when the property is brought under the orders of the Court, provided those powers have not ceased by operation of law, 8 Mad. 420. Section 503 must be read with sec. 276.

[6] Orders under this section are appealable, sec. 588, cl. (24).

Every Receiver so appointed shall— Receiver's liabilities.

(*e*) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property[1];

(*f*) pass his accounts at such periods and in such form as the Court directs;

(*g*) pay the balance due from him thereon as the Court directs; and

(*h*) be responsible for any loss occasioned to the property by his wilful default[2] or gross negligence.

Nothing in this section authorises the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove[3].

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property. When Collector may be appointed Receiver.

505. The powers conferred by this chapter shall be exercised only by High Courts and District Courts: provided that whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorise such Judge to appoint the person so nominated, or pass such other order[4] as it thinks fit[5]. Courts empowered under this chapter.

[1] See form of receiver's bond, Sched. IV, no. 169. In England his appointment is only inchoate till he gives the required security, *Edwards* v. *Edwards*, 2 Ch. D. 291.

[2] As to a receiver's position and functions, see 6 Ben. 486, 9 Mad. 334.

[3] That disobedience to an order of a High Court appointing a receiver is punishable as a contempt, see 7 Bom. H. C., O. C. J. 172.

[4] i. e. give such other direction to the subordinate Judge.

[5] These words give the District Judge full control over the matter of the appointment, 7 Cal. 721.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

Parties to suit may apply for order of reference.

506. If all the parties to a suit desire[1] that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorised in writing in this behalf, to the Court[2] for an order of reference.

Every such application shall be in writing[3] and shall state the particular matter sought to be referred[4].

Nomination of arbitrator. When Court to nominate arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator[5].

Order of reference.

508. The Court shall, by order[6], refer to the arbitrator the matter in difference[7] which he is required to determine, and

[1] The reference should proceed on the recorded and express consent of *all* the parties, and not in the absence of it, Marshall, 517; and one not party to the submission is not bound by the award, L. R., 11 I. A. 20.

[2] This includes an appellate Court, see infra sec. 582: 7 N. W. P. 243: 3 Mad. 78; but not a Court to which issues have been referred under sec. 566 for trial, 7 All. 523.

[3] and either by the parties in person or by their pleaders specially authorised, 16 Suth. Civ. R. 160.

[4] Unless these terms are complied with, jurisdiction does not arise, 6 Moo. I. A. 155.

[5] The parties must either name the arbitrators or consent to the nomination of them by the Court. The Code gives no authority to the Court to force upon a reluctant party the decision of any question in the cause by arbitrators selected at its discretion, 10 Moo. I. A. 425-6. Of course the Court, before nominating any one, should ascertain that he will act, Suth. 1864, p. 338.

[6] See form, Sched. IV, nos. 170, 171.

[7] specifying all the points referred.

shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order[1].

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit[2], except as hereinafter provided[3].

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators[4],

(*a*) by the appointment of an umpire, or

(*b*) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(*c*) by empowering the arbitrators to appoint an umpire, or

(*d*) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act[5].

When reference is to two or more, order to provide for difference of opinion.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses[6], or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion[7] either appoint a new arbitrator or umpire in the place of the person[8] so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit[9].

Death, incapacity, etc. of arbitrators or umpire.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the

Appointment of umpire by Court.

[1] When no such time has been fixed the award falls to the ground, 6 Moo. I. A. 134: 1 Ben. S. N. xiii. Secus 7 N. W. P. 351.

[2] 4 All. 546.

[3] 10 Bom. 381: 8 All. 548: 10 Suth. Civ. R. 398. And neither party can revoke the reference, 17 Suth. Civ. R. 516.

[4] Where no such provision is made the award must be made and signed by all the arbitrators, 19 Suth. Civ. R. 47.

[5] and may extend the time so fixed, 4 Mad. 311.

[6] i.e. consents to act and afterwards refuses, 6 Mad. 414, per Innes J. That the Court cannot refuse to accept the arbitrators' refusal and compel them to act, see 7 All. 20.

[7] 1 Agra, 109.

[8] One new arbitrator may be appointed in place of several arbitrators dying, refusing, etc.

[9] 10 Bom. 381: 7 All. 523: 8 All. 548.

parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of arbitrator or umpire appointed under secs. 509, 510, 511.

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment for default, etc.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

514. If, from the want of the necessary evidence or information, or from any other cause [1], the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit [2], either grant a further time, and from time to time enlarge the period for the delivery of the award [3], or make an order [4] superseding the arbitration, and in such case shall proceed with the suit [5].

Supersession of arbitration.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators,

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree [6].

[1] Such as the illness of one of the arbitrators, Bourke, O. C. J. 359.

[2] 2 Suth. Civ. R. 297.

[3] The application for extension and the order thereon should be in writing, 3 Mad. 59.

[4] Such order is appealable, sec. 588, cl. (25).

[5] 8 All. 548.

[6] Where an umpire has been appointed the Court may extend the time within which the award is to be submitted, 4 Mad. 311.

516. When an award in a suit has been made, the persons who made it[1] shall sign it[2] and cause it to be filed in court[3], together with any depositions and documents which have been taken and proved before them[4]; and notice of the filing shall be given to the parties.

Award to be signed and filed.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

Arbitrators or umpire may state special case.

518. The Court may, by order, modify[5] or correct an award,

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration[6], provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision[7].

Court may, on application, modify or correct award in certain cases.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them[8].

Order as to costs of arbitration.

520. The Court may remit[9] the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(*a*) where the award has left undetermined any of the

When award or matter referred to arbitration may be remitted.

[1] i.e. the arbitrators or umpire. Arbitrators cannot delegate their authority, 7 Suth. Civ. R. 269, or associate a stranger in their proceedings, 7 N. W. P. 367.

[2] 8 Ben. 128: 1 Mad. H.C. 178.

[3] See 5 Ben. 357 (delivery of award to a party). The application that the award be filed must be made within six months from the date of the award, Act XV of 1877, Sched. II, art. 176.

[4] 12 Suth. Civ. R. 397.

[5] Orders modifying awards are appealable, sec. 588, cl. (26).

[6] 2 Ben. Appx. 25.

[7] See sec. 522 infra, 8 All. 449.

[8] That arbitrators may deal with the costs of the reference and award, when all matters in difference between the parties in a suit have been referred, see 1 Ben. O.C. 144.

[9] 2 All. 150: 14 Suth. Civ. R. 470.

matters referred to arbitration, or where it determines any matter not referred to arbitration[1];

(*b*) where the award is so indefinite as to be incapable of execution[2];

(*c*) where an objection to the legality of the award is apparent upon the face of it[3].

Grounds for setting aside award.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it[4]. But no award shall be set aside except on one of the following grounds (namely)—

(*a*) corruption or misconduct[5] of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court[6].

Judgment to be according to award.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application[7] has expired, proceed to give judgment according to the award,

[1] 3 Mad. 68.

[2] An award must be construed by looking to its language, not by help of the oral evidence of the arbitrators, 3 N. W. P. 117.

[3] 2 All. 181, 186 Applications that awards be remitted under this section must, it seems, be made within ten days after the award has been filed, 2 Ind. Jur. N. S. 16, cited by O'K. 490.

[4] 7 Suth. Civ. R. 406.

[5] i. e. legal, not moral, misconduct, 9 All. 253, 264, following Russell, 6th ed. 677. Refusal to reconsider an award remitted is misconduct, 3 Suth. Civ. R 168: so is signing the award without having attended or taken any interest in the proceedings, 22 ibid. 418.

[6] 8 All. 543, 548. An order setting aside an award is merely interlocutory, not subject to appeal, but only to revision by an appellate Court, 11 Cal. 174, dissenting from 4 Cal. 231. The Allahabad High Court declined to revise such an order, 5 All. 293.

[7] i. e. ten days from the day on which the award is submitted to the Court, Act XV of 1877, Sched. II, art. 158.

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award [1].

Decree to follow.

523. When any persons agree in writing [2] that any difference between them [3] shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in court [4].

Agreement to refer to arbitration may be filed in court.

The application shall be in writing, and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Application to be numbered and registered.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

Notice to show cause against filing.

[1] as given by the arbitrators, not as amended by the Court under sec. 518, 8 All. 449.

The question whether an appeal lies under section 522 against a decree given in accordance with an award depends on whether the award was valid and legal, 11 Cal. 41, following 9 Cal. 905 and 6 All. 174. Section 522 assumes that the conditions existed for passing a decree, that is to say, an award regularly and properly arrived at by arbitrators duly appointed, 6 Mad. 415. See too 8 All. 449, where Mahmúd J. held that the words 'in excess . . . award' are meant to enable the appellate Court to check the improper use of the power conferred by sec. 518. If the Court has, without jurisdiction, appointed new arbitrators, its decree according to their award may be set aside under sec. 622, 6 Mad. 414.

[2] e.g. by a series of letters.

[3] present or future, 19 C. B. N. S. 342: L. R., 1 C. P. 671.

[4] The mere pendency of a suit respecting the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement, 4 Bom. 1.

If no sufficient cause[1] be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

Provisions of chapter applicable to proceedings under order of references.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed[2], shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Filing award in matter referred to arbitration without intervention of Court.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award[3] has been made thereon, any person interested in the award may apply[4] to the Court of the lowest grade having jurisdiction[5] over the matter[6] to which the award relates, that the award be filed in court.

Application numbered and registered.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants[7].

Notice to parties to arbitration.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to

[1] In a case on the corresponding section (327) of Act VIII of 1859, the Judicial Committee thought that the words 'sufficient cause' included any substantial objection appearing on the face of the award, or founded on the misconduct of the arbitrators or on any miscarriage in the course of the proceedings, or on any other ground which would be considered fatal to an award on an application to the Courts in England, L. R., 3 I. A. 213. A mere arbitrary revocation of the submission is clearly not 'sufficient cause,' 12 Moo. I. A. 112.

[2] These words refer to the provisions of the agreement as to matters for which it may lawfully provide, but not (e.g.) to a provision excluding applications to the Court to set aside the award, 6 Mad. 369.

[3] 11 Cal. 356.

[4] within six months from the date of the award, Act XV of 1877, Sched. II, art. 176; see 21 Suth. Civ. R. 248. He may also enforce the award by regular suit, 4 Mad. H. C. 119.

[5] 2 Bom. H. C. 91.

[6] i.e. the whole matter, 5 Mad. H. C. 128.

[7] After being registered the application is a suit for other purposes than mere classification, 7 Bom. 320, following 2 All. 471, but differing from 7 Cal. 490.

show cause[1], within a time specified, why the award should not be filed[2].

526. If no ground such as is mentioned or referred to in section 520 or section 521 be shown against the award, the Court shall order it to be filed[3], and such award shall then take effect as an award made under the provisions of this chapter[4]. Filing and enforcement of award.

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court[5], and providing that, upon the finding of the Court with respect to such question, Power to state case for Court's opinion.

(*a*) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(*b*) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

[1] i.e. allege and prove to the satisfaction of the Court, 6 Bom. 633, followed in 9 Cal. 575, 11 Cal. 166. But the Calcutta High Court has held that it is enough to show by affidavit or verified petition that the award is impugned for any of the reasons mentioned in sec. 520 or sec. 521; 9 Cal. 560.

[2] When the Court refuses to file the award no appeal lies, 7 Cal. 490: 6 All. 186.

[3] The power to file the award includes the power to inquire if there was a submission to arbitration; and the question of fact whether the submission was made is, like any other question of fact essential to the validity of the award, concluded by the decree, 4 Mad. 319, 320.

[4] The meaning of the last seventeen words is that the Court, after ordering the award to be filed, shall do as directed in sec. 522; 2 All. 473. No appeal lies against an order under this section, 9 Bom. 85: 10 Cal. 11 and 74. The Court has no power to send back the award. But the party to be benefited can sue on an award which the Court refuses to file, 9 Bom. 86. Where the objection gives rise to difficult questions, the applicant should be left to a regular suit on the award, 9 Bom. 254, which of course may be brought, 8 Mad. H. C. 81.

[5] The case must be upon a real, not a hypothetical, state of facts, *Republic of Boliria* v. *National Bolivian Navigation Co.*, 24 W. R. 361.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby[1].

When value of subject-matter must be stated.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement filed and numbered as suit.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement[2].

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of case.

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(*a*) that the agreement was duly executed by them, and

(*b*) that they have a *bonâ fide* interest in the question stated therein, and

(*c*) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

[1] For precedents of cases stated under this section see 6 Bom. 43-46 and 10 Bom. 416.

[2] not necessarily in the Court of the lowest grade having jurisdiction, etc.

CHAPTER XXXIX.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS[1].

Institution of summary suits upon bills of exchange etc.

532. In any Court to which this section applies all suits upon bills of exchange, hundís or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint[2] in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe[3].

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest[4] at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Payment into Court of sum mentioned in summons.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable, or feels reasonable doubt as to its good faith[5].

Explanation.—This section is not confined to cases in which

[1] The corresponding English practice is under Ord. iii. rr. 6, 7, and Ord. xiv. r. 1. In the County Courts the Bills of Exchange Act, 1855, is still in force.

[2] within six months from the time when the instrument sued upon becomes due and payable, Act XV of 1877, sched II, no. 5.

[3] The High Court may extend the time within which a defendant in a suit under this chapter can come in and obtain leave to defend, 3 Cal. 539.

[4] 6 Mad. H. C. 257.

[5] See per Bramwell B. in *Agra and Masterman's Bank* v. *Leighton*, L. R., 2 Exch. 56.

the bill, hundí or note sued upon, together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover [1].

Defendant showing defence on merits to have leave to appear.

533. The Court shall, upon application by the defendant [2], give leave [3] to appear and to defend the suit, upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security [4], framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree.

534. After decree, the Court may, under special circumstances [5], set aside the decree [6], and if necessary stay [7] or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill etc. to be deposited with officer of Court.

535. In any proceeding under this chapter the Court may order the bill, hundí or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of costs of noting non-acceptance of dishonoured bill or note.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting [8] the same for non-acceptance or non-payment, or otherwise [9], by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Procedure in suits

537. Except as provided by sections 532 to 536 (both in-

[1] This explanation reverses a decision of Phear J. on Act V of 1866, 3 Ben. O. C. J. 146: see 1 Cal. 130.

[2] within ten days from the time when the summons is served, Act XV of 1877, sched. II, no. 159.

[3] Leave may be granted *ex parte*, 6 Ben. Appx. 64.

[4] As to the discretionary power to require security, see 6 Ben. Appx. 64.

[5] 3 Ben. Appx. 7.

[6] That an appeal lies from an order under this section, refusing to set aside an *ex parte* decree, see 2 Bom. 644. But see 4 All. 387.

[7] 3 Ben. O. C. J. 83.

[8] See the Negotiable Instruments Act, 1881, sec. 99: supra, vol. I. p. 706.

[9] The words 'or otherwise' seem to enlarge the words 'expenses incurred,' and would, accordingly, include costs of protest on a foreign bill.

clusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V. under chapter.

538. Sections 532 to 537 (both inclusive) apply only to— Application of chapter.

(*a*) the High Courts of Judicature at Fort William, Madras and Bombay;

(*b*) the Court of the Recorder of Rangoon;

(*c*) the Courts of Small Causes in Calcutta, Madras and Bombay[1];

(*d*) the Court of the Judge of Karáchí; and

(*e*) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them[2].

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes[3], or whenever the direction of the Court is deemed When suits relating to public charities

[1] 8 Ben. Appx. 10, where a suit for a sum within the jurisdiction of the Small Cause Court was successfully brought in the High Court.

[2] The Government of Madras has applied them to the Madras Small Cause Court and to all District Munsifs' Courts in the Madras Presidency, Macpherson's *Lists*, 1884, pp. 115, 128; and the Chief Commissioner of British Burma has extended them to the Courts of the Judge of Maulmain and the Deputy Commissioner of Akyab, *British Burma Gazette*, March 1883, Part I. p. 98.

[3] A trust 'for the feeding of wayfarers and travellers' is a trust for the benefit of a considerable portion of the public answering a particular description, and therefore a trust for a 'public charitable purpose,' 11 Cal. 36. As to the words 'or religious,' see 10 Mad. 506.

may be brought.

necessary for the administration of any such trust, the Advocate General acting *ex officio*[1], or two or more persons having a direct interest in the trust[2] and having obtained the consent in writing of the Advocate General[3], may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

(*a*) appointing new trustees under the trust;

(*c*) vesting any property in the trustees under the trust;

(*c*) declaring the proportions in which its objects are entitled;

(*d*) authorising the whole or any part of its property to be let, sold, mortgaged or exchanged;

(*e*) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require[4].

The powers conferred by this section on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Goverment may appoint in this behalf[5].

Act No. X of 1840, section two, is hereby repealed.

[1] His costs come out of the trust fund, 7 Bom. 19, 22, 23.

[2] 8 Cal. 32. But see 7 All. 178, per Mahmúd J. As to the power of the representatives of the author of a charitable or religious trust, see 5 Cal. 700.

[3] 10 Mad. 185.

[4] Where the object of a suit is merely to recover the trust-property from outsiders, this section does not apply, 8 Bom. 365. The section is permissive or directory, not mandatory, 8 Bom. 451, 452. It does not prohibit private suits without the Advocate General's consent. As to suits for the management of a religious endowment, to which the Advocate General is not a party, see 3 Cal. 563: 3 Bom. 27 (breach of trust with reference to *devasthán* property).

[5] *N. W. P. and Oudh Gazette*, 27 July, 1878, p. 1058: *Central Provinces Gazette*, Oct. 1877, Part I. A. p. 305. As to the Assistant Commissioner, Ajmer, see *Gazette of India*, 23 Dec. 1882, Part II. p. 856.

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PART VI.

OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code[1] or by any other law for the time being in force[2], an appeal shall lie from the decrees, or from any part of the decrees[3] of the Courts exercising original jurisdiction to the Courts authorised[4] to hear appeals from the decisions of those Courts[5].

Appeal to lie from all original decrees, except when expressly prohibited.

[1] See sec. 597.

[2] See, for example, Act I of 1877, sec. 9 (summary suits for possession of immoveable property), and Act XV of 1882, sec. 37 (judgments of Presidency Small Cause Courts). An appeal may also be barred by agreement, 14 Moo. I. A. 203: 8 Cal. 455: 1 All. 267.

[3] The Code allows an appeal against a portion of the decision; but this supposes that there is a decision relating to the disposal of the entire suit, 3 Mad. 13. There is no appeal from a *judgment* or any part thereof, 6 Cal. 208, but see ibid. 303. And a majority of the High Court at Allahabad has held that, if a decree is on the face of it entirely in favour of a party to a suit, he has no right of appeal therefrom, 7 All. 610.

That there may be circumstances justifying an appeal on a mere question of costs, see 3 Mad. H. C. 279: 8 Bom. 370, but see 8 Bom. H. C., A. C. J. 100, 142. The Judicial Committee will not, as a rule, alter the direction of the Court below with respect to costs when no substantial alteration is made in the decree itself, 7 Bom. 33.

As to the times within which appeals under this Code must be made see infra, Act XV of 1877, sched. II, arts. 151, 152, 153, 156.

[4] with reference to the actual value of the subject-matter in dispute in the original suit, 7 Mad. H. C. 356: 9 Ben. 190: 5 N. W. P. 175: 9 Bom. H. C. 286.

[5] A defendant against whom a decree has been passed *ex parte* may therefore appeal, 3 Mad. 264: 9 Mad. 445, dissenting from 4 All. 387. An appeal therefore lies from a decree under sec. 77 of the Registration Act, 1877, 8 Bom. 269. Or from an order made under sec. 37 of the Bengal Rent Act (Ben. Act VIII of 1869), 7 Cal. 684. Or from an order purporting to cancel a certificate, granted under Act XXVII of 1860, to collect the debts of a deceased person.

Form of appeal.

Copy to accompany memorandum.

541. The appeal shall be made in the form of a memorandum in writing presented[1] by the appellant[2], and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant[3]:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground[4].

Rejection or amendment of memorandum.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court[5], or be amended then and there[6].

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

When one of several plaintiffs or defendants may

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against[7] proceeds on any ground common to all the plaintiffs or to all the

[1] to the Judge, 3 N. W. P. 341.

[2] See the form, sched. IV, no. 173. The appellant may be any party to the suit who is dissatisfied with the decree, 3 All. 152, 157. But he must be a party, 1 Mad. H. C. 8, or the representative of one, 5 Suth. Civ. R. 133: 7 Ben. 149.

[3] Ben. F. B 900.

[4] 2 All. 884.

[5] So when it is returned for the purpose of being sufficiently stamped a time should be fixed, 2 All. 875.

[6] There is no limitation as to the time within which the memorandum may be rejected or amended, 7 All. 85.

[7] whether *ex parte* or not. 13 Suth. Civ. R. 114.

defendants[1], any one of the plaintiffs or of the defendants may appeal against the whole[2] decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be[3].

obtain reversal of whole decree.

Of staying and executing Decrees under Appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause[4] order the execution to be stayed[5]:

Execution of decree not stayed solely by reason of appeal.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed[6]:

Stay of execution before time for appealing has expired.

Provided that no order shall be made under this section unless the Court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made[7];

(*b*) that the application has been made without unreasonable delay[8]; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him[9].

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree[10], or

Security in case of order for execution of decree appealed against.

[1] and in such cases only, 14 Suth. Civ. R. 130.

[2] 18 Suth. Civ. R. 26.

[3] For cases within this section see 3 Cal. 738: 7 Ben. Appx. 28: 4 Mad. H. C. 26: 11 Bom. 596. For cases not within it, see 2 Suth. Civ. R. 227: 11 ibid. 238.

[4] shewn by a party, Marshall, 478.

[5] As to staying execution of decrees appealed to Her Majesty in Council, see infra, secs. 606, 608.

[6] Such order is appealable under sec. 244, 7 All. 73.

[7] See *Wilson* v. *Church*, 12 Ch. Div. 454.

[8] 17 Suth. Civ. R. 160.

[9] Bourke, O. C. J. 103. An order requiring excessive security is appealable, 12 Cal. 624. As to the cessation of the surety's liability, see 13 Suth. Civ. R. 403: 2 Bom. 654: 3 Bom. 204.

[10] An order requiring such security is appealable under sec. 244, cl. (*c*), 8 Cal. 477.

for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

No such security to be required from Government or public officers.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued[1] in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

Registry of memorandum of appeal.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.

Such book shall be called the Register of Appeals[2].

Power to require appellant to give security for costs.

549. The Appellate Court may at its discretion[3], either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security[4] for the costs of the appeal, or of the original suit, or of both[5]:

[1] under chap. XXVII.

[2] see form, sched. IV, no. 174. When an appeal is once registered, the appellant cannot withdraw it without the Court's permission, 3 Mad. H. C. 368.

[3] Of course this discretion must be properly exercised; and it is not so exercised when the order requiring security has been made without opportunity being given to the appellant to show cause against it, 5 All. 380.

[4] i.e. some ascertained amount of security, 9 All. 164.

[5] The appellant's poverty is by itself no sufficient ground for requiring him to give security for the costs of the appeal, 3 Bom. 2: 417 All. 546: 8 All. 203. A suitor *in formâ pauperis* may, however, be required under this section to give security for costs; but very special grounds (e.g. that he is a mere creature in the hands of a wealthy man) should be shown, 3 Mad. 66 (dissenting from 17 Suth. Civ. R. 68), and see 7 All. 542: 3 Bom. 242. No appeal lies from an order under this paragraph, 6 N. W. P. 172, 175.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

When appellant resides out of British India.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal[1].

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

Notice to Court whose decree appealed against.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit[2], or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Copies of exhibits.

551. The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court[3].

Power to confirm decision of lower Court without sending it notice.

552. The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Day for hearing appeal.

Such day shall be fixed with reference to the current

[1] This, of course, is subject to the power of the Court to extend the time within which it has ordered the security to be furnished, 1 All. 687: 11 Cal. 716; see 9 All. 164. The rejection of the appeal is a decree and appealable, 5 All. 380.

[2] 11 Suth. Civ. R. 248.

[3] Cf. Act IX of 1873, sec. 7, by which sec. 551 was suggested. A proceeding under this section is a trial, 2 All. 819, 823; the 'confirmation' is a decree (sec. 2); and the procedure authorised under sec. 552 does not dispense with the necessity of drawing up a judgment, 3 Mad. 1.

business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Publication and service of notice of day for hearing appeal.

553. Notice of the day so fixed shall be stuck up in the appellate court-house, and a like notice[1] shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

Contents of notice.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

Right to begin.

555. On the day so fixed, or on any other day to which the hearing may be adjourned[2], the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once[3], hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal of appeal for appellant's default.

556. If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default[4].

[1] See form, sched. IV, no. 175. In the case of the High Courts see sec. 636.

[2] When an appeal was decided *before* the day so fixed, the pleaders being present and arguing the case, the irregularity was condoned, 1 Suth. Civ. R. 246.

[3] 3 Bom. O. C. J. 53.

[4] So when *both* parties failed to appeal, Marshall, 5. So when the pleader who has signed the memorandum refuses to argue on the ground that he is unprepared, 15 Suth. Civ. R. 143. The order of dismissal is not appealable, 2 All. 616.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

Hearing appeal *ex parte*.

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court[1], the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed[2]:

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorised agent.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply[3] to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him[4].

Re-admission of appeal dismissed for default.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent[5].

Power to adjourn hearing, and make persons interested respondents.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may

Re-hearing on application of re-

[1] 11 Suth. Civ. R. 290.

[2] And there is no appeal against such order.

[3] within thirty days from the date of the dismissal, Act XV of 1877, sched. II, art. 168.

[4] An order refusing to re-admit an appeal is appealable, sec. 588, cl. (27).

[5] This discretionary power is not affected by the Limitation Act, 9 Cal. 362. It does not empower the Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal, 5 All. 267.

spondent against whom *ex parte* decree made.

apply[1] to the Appellate Court to rehear the appeal[2]; and if he satisfies the Court[3] that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing[4], the Court may rehear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him[5].

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

561. Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him[6] in the Court below, but take any objection to the decree[7] which he could have taken by way of appeal[8], provided he has filed a notice of such objection not less than seven days before the date fixed[9] for the hearing of the appeal[10].

Form of notice, and provisions applicable thereto.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto[11].

Remand of case by Appellate Court.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to

[1] within thirty days from the date of the hearing of the appeal, Act XV of 1877, sched. II, no. 169.

[2] This is permissive and discretionary, not mandatory, and does not (e.g.) deprive respondents of their right of second appeal under sec. 584, 2 All. 568.

[3] by sufficient evidence, 6 Suth. Misc. 43.

[4] If he is not prepared at the time to satisfy the Court in these particulars his application is properly rejected, 6 Cal. 548.

[5] An order refusing to rehear is appealable, sec. 588, cl. (27).

[6] The 'grounds' referred to must be questions substantially in issue, 4 All. 491.

[7] Marshall, 153: Ben. F. B. 431: 8 Bom. 368. Whether the words 'objection to the decree' refer only to matters existing upon the face of the decree, and not to those which should have existed but do not exist in the decree, see 7 All. 620.

[8] The right is not restricted to matters in contention between the objecting respondent and the appellant, 7 Mad. 215.

[9] The object of this provision is that the appellant may have timely intimation of proposed objections. When, therefore, the hearing is postponed, it is enough if the notice is filed seven days before the day fixed for the postponed hearing, 8 Bom. 559: see 9 Cal. 631. But see 4 All. 248. The provisions of para. 2 of sec. 5 of the Limitation Act do not extend to the period of seven days, 7 Cal. 654. But where the time for filing the notice expires when the Court is closed, the first paragraph of that section applies, 4 All. 430.

[10] Cross-objections cannot be taken or filed *in formâ pauperis*, 11 Cal. 735: 1 Bom. 75: 8 Mad. 215.

[11] 8 All. 551.

exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded[1].

When further evidence barred.

563. When a case is remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken[2].

Limit to remand.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562[3].

When evidence on record sufficient, Appellate Court to determine case.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall, after resettling the issues, if necessary, finally determine the case[4], notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds[5].

When Appellate Court may frame issues and refer them

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact[6], which appears to the Appellate Court essential to the right decision of the suit upon the merits[7],

[1] This is the only section empowering the appellate Court to remand, 8 Cal. 923, 926. The remand cannot be for the purpose of amending the plaint, 2 All. 670, or resettling issues, 14 Suth. Civ. R. 69. And see 9 Mad. 355: 11 Bom. 663.

Orders remanding a case are appealable, sec. 588, cl. (28), even though the case remanded is a Small Cause Court case, 3 All. 18.

[2] As to the positive duty of the Court to fix a day for the parties to appear etc., see 14 Suth. Civ. R. 404: 17 ibid. 70.

[3] 10 Bom. 398: 6 Mad. 239, 244.

[4] 3 Mad. 96; but see 5 All. 14.

[5] 12 Cal. 239. Section 565 enables the appellate Court in some cases to determine a question of fact upon the evidence then on the record, but cannot apply where the case has not been set up in the lower Court, L. R., 12 I. A. 170.

[6] in a legal manner, 7 All. 655.

[7] 5 Cal. 283.

for trial to Court whose decree appealed against.

and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial [1], and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon [2] together with the evidence [3].

Finding evidence to be put on record.

Objections to finding.

Determination of appeal.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time [4] to be fixed by the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Production of additional evidence in Appellate Court.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(*a*) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(*b*) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined [5].

Whenever additional evidence is admitted by an Appellate

[1] That this power should be cautiously exercised, see 11 Moo. I. A. 48: L. R., 3 I. A. 279.

[2] i.e. its answer to the proposition referred for inquiry, 7 All. 771. The Court to which issues are referred under this section has only jurisdiction to try them, and cannot, e. g., refer the case under chap. XXXVII, 7 All. 523.

[3] That the appellate Court may examine the evidence on which such finding is founded, see 2 All. 908, following 1 All. 165 and dissenting from 1 Agra, 50.

[4] i.e. a reasonable time, 4 Agra, 96. That objections not taken under sec. 567 cannot be raised on second appeal, see 10 All. 28.

[5] 11 Cal. 142, 143. A local inquiry may be ordered under this section, 17 Suth. Civ. R. 300. An order refusing to admit additional evidence may be reviewed, 17 ibid. 47.

Court, the Court shall record[1] on its proceedings the reason for such admission[2].

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Mode of taking additional evidence.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified[3].

Points to be defined and recorded.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Judgment when and where pronounced.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Language of judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Translation of judgment.

[1] in open court and in the presence of the parties, 21 Suth. Civ. R. 416.

[2] This provision, though not a condition precedent to the reception of the evidence, is yet one that ought at all times to be strictly complied with. It is a salutary provision, which operates as a check against a too easy reception of evidence at a late stage of litigation, and the statement of the reasons may inspire confidence and disarm objection, 11 Moo. I. A. 368, per Lord Romilly.

[3] See form of order, Suth. Sp No. p. 125.

Contents of judgment.

574. The judgment of the Appellate Court shall state—

(*a*) the points for determination;

(*b*) the decision thereupon;

(*c*) the reasons for the decision [1]; and

(*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled [2],

Date and signature.

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein [3].

Decision when appeal heard by two or more Judges.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it [4].

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section [5].

[1] showing upon what points of fact or law the decision turns, 12 Suth. Civ. R. 272, per Markby J.

[2] 1 Ben. A. C. 50.

[3] These provisions are imperative, and apply alike to cases remanded by the first appellate Court for the trial of issues and to those in which no such remand has taken place, 6 All. 383, and see 9 All. 27, 31.

[4] The Bench hearing an appeal so referred must include the Judges who first heard it, and whose difference in opinion necessitated the reference, 6 All. 468.

[5] This section does not take away the right of appeal which is given by clause 15 of the Letters Patent. But it supersedes the provision in clause 36, 10 Cal. 816, following 3 Bom. 204.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same. Dissent to be recorded.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly. What judgment may direct.

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case[1] or the jurisdiction of the Court[2]. No decree reversed etc. for error etc. not affecting merits or jurisdiction.

Of the Decree in Appeal.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced. Date and contents of decree.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal[3].

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

[1] 15 Suth. Civ. R. 535 (decree making an agent liable instead of his principal): 6 Bom. H. C., A. C. J. 20 (suit without written authority on behalf of absent sepoy).

[2] See the Evidence Act (I of 1872), sec. 167: 8 Bom. 410: 2 All. 889: 4 All. 163, 289: 14 Cal. 159. Sec. 12 of the Court Fees Act (which requires a superior or appellate Court to dismiss the suit in case the court-fee is deficient and the defaulter does not pay in the deficiency) must be read with sec. 578 of the Code, 7 Cal. 348, 352. See Act VII of 1887, sec. 11.

For instances of the irregularities contemplated by this section see Marshall, 455 (trying two suits together): 13 Suth. Civ. R. 325 (misvaluation of suit): 11 Bom. H. C. 135 (admitting a document not duly stamped): 8 Bom. 408 (excluding evidence): 3 All. 824 (wrong side beginning): 4 All. 163 (misjoinder).

[3] But it need not state the claim, so as to make such statement part of the decree itself, 11 Bom. 177.

Judge dissenting from judgment.

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree[1].

Copies of judgment and decree to be furnished.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed against.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

Appellate Court's powers and duties.

582. The Appellate Court shall have, in appeals under this chapter, the same powers[2], and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and, in chapter XXI, so far as may be[3], the words 'plaintiff,' 'defendant' and 'suit' shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death, marriage or insolvency of parties to an appeal[4].

[1] This section does not apply to the High Courts or the Chief Court of the Panjáb in the exercise of appellate jurisdiction, sec. 638, infra: Act XVIII of 1884, s. 16.

[2] i.e. powers for granting time, for adjournment of hearing, for examination of parties and pleaders, for awarding costs, etc. The word is not used in the sense of 'jurisdiction,' 1 Ben. A. C. J. 163; and see 4 Suth. Civ. R. 109 (separating misjoined suits): 8 ibid. 368 (adding a respondent): 14 ibid. A. O. J. 17 (allowing a case to be withdrawn): 17 ibid. 300 (directing a local investigation).

[3] i.e. so far as may be necessary in order to carry into effect the remedies contemplated by chap. xxi, 7 All. 697, per Petheram C.J.

[4] Thus the appellate Court may, with the consent of the parties, refer to arbitration matters in dispute in an appeal, 3 Mad. 78, dissenting from 12 Ben. 266. But in disposing of the case it should confine itself to deciding the matters put in issue by the parties, 1 All. 545. As to the finality of an appellate decree in accordance with an award, see 10 All. 8. As there is no section in chap. xxi which provides for the representatives of a sole defendant who has died being placed on the record at their own request, sec. 582 supplies no such procedure in the case of the death of a sole respondent, 9 Bom. 56. As to the application to appeals of sections 368, 369, and 372, see 4 Bom. 654: 9 Bom. 151. An appellant may determine who shall be a respondent, but not that any particular person shall not be a

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.

Execution of decree of Appellate Court.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal[1], according to the rules hereinbefore prescribed for the execution of decrees in suits[2].

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

Second appeals to High Court.

584. Unless when otherwise provided by this Code or by any other law, from all decrees[3] passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal.

(*a*) the decision being contrary to some specified law[4] or usage having the force of law[5];

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure[6] as prescribed by this Code or any other law, which may possibly[7]

respondent, ibid. There is no power to add a co-appellant, 10 Bom. 227.

[1] 14 Moo. I. A. 489, 490.

[2] 7 All. 170 and 197 : 8 All. 545 : 9 Mad. 506.

[3] not from the *judgments*, or any part thereof, 6 Cal. 208, 323.

[4] i. e. the statute law, 7 All. 653. Deciding an issue wholly upon that which is not evidence is erroneous in point of law, Sev. 163.

[5] i. e. the common or customary law of the country or community, 7 All. 653. For instance, a usage which prevented the Government or superior landholder from ejecting an ordinary tenant so long as the latter was willing to pay such reasonable assessment as might be demanded of him.

[6] Where, therefore, a lower appellate Court has drawn strained or unreasonable conclusions from the evidence, or has discredited or disbelieved witnesses or documentary proof upon capricious or unsustainable grounds, or has perversely interpreted or shut its eyes to proved facts, or has stated no intelligible reasons for arriving at its findings of facts, the High Court may take notice of all such matters in second appeal, 7 All. 655; and see 9 Cal. 309: 10 Cal. 932.

[7] The insertion of 'possibly' was suggested by 21 Suth. Civ. R. 57.

have produced error or defect in the decision of the case upon the merits[1].

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

No second appeal in certain suits.

586. No second appeal shall lie in any suit of the nature cognisable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees[2].

Provisions as to second appeal.

587. The provisions contained in chapter XLI shall apply, as far as may be[3], to appeals under this chapter[4], and to the execution of decrees passed in such appeals[5].

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders :—

(1) orders under section 20, staying proceedings in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant[6];

(3) orders under section 36 or section 66, directing that a party shall appear in person;

[1] 6 Cal. 206: 12 Cal. 199.

[2] 9 Bom. 259: 2 Cal. 474 (but see 2 Bom. H. C. 4): 7 Bom. 100. This does not take away the right of appeal given by secs. 588, 589 from an order of remand contemplated by sec. 562, 7 Bom. 292; and see 8 Bom. 260. Section 586 applies only to appeals from appellate *decrees*, 3 All. 18. No appeal lies to Her Majesty in Council from any decree which, under sec. 586, is final; see infra, sec. 597.

[3] i. e. as far as is consistent with the principles on which appeals from appellate decrees are admitted and determined, 7 Mad. 52, which principles confine the adjudication to matters in which a question of law is involved, ibid. 54.

[4] This restriction does not apply to appeals from one of the Judges of the High Court to the full Court, L. R., 10 Ind. App. 17: 9 Cal. 494 (S. C.).

For the form of the register of appeals from appellate decrees, see sched. IV, no. 177.

[5] But see 9 All. 147 (overruling 7 All. 765 and 8 All. 172) as to the non-applicability of secs. 565 and 566 to second appeals.

The provisions of sec. 541, extended to second appeals by sec. 587, do not require that any documents should be presented with the appeal other than a copy of the decree appealed against and the judgment on which it is founded. A copy of the decree of the Court of first instance is not required, 4 Mad. 419.

[6] But orders under sec. 32 refusing to make certain persons defendants are not appealable, 2 All. 904.

(4) orders under section 44, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court[1];

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;

(9) orders rejecting applications under section 108, for[2] an order to set aside a decree *ex parte*;

(10) orders under sections 113, 120 and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162, for the attachment and sale of moveable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

(16) orders under section 294, the first paragraph of section 312[3] or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters[4], under section 351, section 352, section 353 or section 357[5];

(18) orders under section 366, paragraph two, section 367 or section 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

[1] 3 All. 456.

[2] For 'for' the official edition of the Code has here by a misprint, 'or.'

[3] 7 All. 254.

[4] This wide expression is used in order to include any question arising out of the functions entrusted to the Court under the sections specified, 4 Cal. 888, 890.

[5] 6 Cal. 168 (refusal to grant an application to be made an insolvent), dissenting from 5 Cal. 719. The orders specified in clauses (15), (16), and (17) are appealable to the High Court, sec. 589.

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections under section 372;

(22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under section 473, clause (*a*), (*b*) or (*d*), section 475 or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503[1];

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case[2];

(29) orders under any of the provisions of this Code[3], imposing fines[4], or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree[5].

The orders passed in appeals under this section shall be final[6].

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed, by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court[7].

[1] An order rejecting an application to appoint a receiver is appealable under this clause, 10 Mad. 179, overruling 6 Mad. 355.

[2] 3 All. 18. The functions of the High Court in appeals under this clause are limited to disposing of such points as properly fall within the scope of sec. 562, 7 All. 139: 8 Cal. 674.

[3] See sec. 651 infra, and 5 All. 318. Clause (29) does not apply to attachments for contempt; but under clause (15) of the Letters Patent an appeal will lie from a High Court's order of committal for contempt, 7 Bom. 5.

[4] 5 Cal. 311.

[5] Where an order specified in this clause is made by a Court of Small Causes an appeal therefrom shall lie to the District Court, Act IX of 1887, sec. 24.

[6] 3 All. 554: 9 Mad. 447. The orders specified in this section are excluded from the definition of 'decree,' supra, sec. 2.

[7] 10 Cal. 524.

590. The procedure prescribed in chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided[1]. Procedure in appeals from orders.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction[2]; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree.

CHAPTER XLIV.

OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application[3] accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable: Who may appeal as pauper

Provided that the Court shall reject the application, unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust[4]. Procedure on application for admission of appeal.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against Inquiry into pauperism.

[1] As to appeals from orders under the Insolvent Act, see 12 Cal. 630.

[2] i. e. *civil* jurisdiction, 7 Bom. 12. The section, therefore, does not apply to orders of attachment for contempt made by a High Court. In such case an appeal lies under sec. 15 of the Letters Patent, ibid.

[3] This must be presented in person (not by pleader), unless the applicant is exempted under sec. 640 or 641. 8 Mad. 504, and it must be made within thirty days of the date of the decree appealed against, Act XV of 1877, sched. II, art. 170. It need not be preceded by a separate application for inquiry into the appellant's pauperism, 1 N. W. P. 246.

[4] No appeal lies from an order rejecting an application under this section, 9 Mad. 447: 4 All. 91.

whose decision the appeal is made under the orders of the Appellate Court:

Proviso.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

'Decree' defined.

594. In this chapter, unless there be something repugnant in the subject or context, the expression 'decree' includes also judgment and order.

When appeals lie to Queen in Council.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

an appeal shall lie to Her Majesty in Council—

(*a*) from any final decree[1] passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(*b*) from any final decree[1] passed by a High Court[2] in the exercise of original civil jurisdiction, and

(*c*) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council[3].

Value of subject-matter.

596. In each of the cases mentioned in clauses (*a*) and (*b*) of section 595,

[1] 3 All. 633: 4 All. 238: 6 Bom. 260. When a decree does not adjourn the consideration of the case, it is said to be 'final.' Such is said to be a decree in a suit for foreclosure or redemption although accounts are directed to be taken and a further order is required (Act IV of 1882, sec. 86) to complete the decree, see 8 Bom. 551.

[2] This includes the Recorder of Rangoon, sec. 614.

[3] Where a suit miscarried owing to the manner in which the issue was framed by the Judge, the costs of appeal to Her Majesty in Council were directed to be costs in the cause, 12 Moore, I. A. 289. More as to costs, bid. 343.

the amount or value[1] of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards[2].

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law[3].

Bar of certain appeals.

597. Notwithstanding anything contained in section 595, no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being[4];

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application for leave to appeal.

598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition[5] to the Court whose decree is complained of.

[1] i.e. the selling or market value, 7 Moore, P. A. 428: 8 ibid. 193; and see L. R., 1 I. A. 317.

[2] 8 Cal. 210. Where the amount or value is less than rs. 10,000 the Judicial Committee will not entertain an application for special leave to appeal to Her Majesty in Council unless the petitioner has applied to the High Court for such leave and been refused, 13 Moo. I. A. 433. As to estimating the value of the subject-matter, see 8 Moo. I. A. 165; that interest may be added to the principal in order to make up the amount, see ibid. 164; and that the stamp on the plaint is not conclusive of the value of the subject-matter of the suit, see 7 Moo. I. A. 428.

[3] That this provision is not *ultra vires* of the Indian legislature as curtailing the jurisdiction given to the High Courts by the Letters Patent, 1865, cl. 39, see 1 Cal. 431.

[4] In such case an appeal should be had in the first instance to a Division Bench of the High Court before an appeal can be preferred to Her Majesty in Council, 10 Cal. 814, 817.

[5] within six months from the date of the decree appealed against, see sec. 599 (the reenactment of which in

Time within which application must be made.

599. Such application must ordinarily[1] be made within six months from the date of such decree[2].

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

Certificate as to value or fitness.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusing certificate.

601. If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate[3].

Security and deposit on grant of certificate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date[4],

(*a*) give security for the costs of the respondent, and

(*b*) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

1882 was a mistake), and Act XV of 1877, sched. II, no. 177: 6 All. 250. As to applications to appeal *in formâ pauperis* to Her Majesty in Council, see 4 Moo. I. A. 114: 10 Moo. P. C. 533: 8 Suth. Civ. R. 48.

[1] 10 Mad. 373.

[2] Act I of 1868, sec. 3, cl. (2), supra, vol. I. p. 489.

[3] If the High Court dismisses the appeal, the petitioner may still apply to Her Majesty in Council for special leave to appeal. As to the petition in such case, see 11 Moo. I. A. 1.

[4] The time named is subject to extension at the sound discretion of the Court, L. R., 11 Ind. Ap. 7 (S. C. 10 Cal. 557): 6 All. 250: 7 All. 93.

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy[1].

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

Admission of appeal and procedure thereon.

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent, and shall then

(*c*) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(*d*) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Revocation of acceptance of security.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

Effect of failure to comply with order

[1] No appeal lies from an order granting or refusing the certificate mentioned in secs. 600-602, 24 Suth. Civ. R. 148: 25 ibid. 529: 7 Cal. 339.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

Refund of balance of deposit.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

Powers of Court pending appeal.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(*a*) impound any immoveable property in dispute or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(*c*) stay the execution of the decree appealed against[1], taking such security[2] from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(*d*) place any party seeking the assistance of the Court, under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit[3].

Increase of security found inadequate.

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

[1] As to the cessation of a rule staying execution when the judgment of the Judicial Committee is known in India, see 19 Suth. Civ. R. 186.

[2] As to the amount of the security, see 14 Suth. Civ. R. 361: as to enforcing it, 2 All. 604.

[3] The object of this section is to maintain, if it is expedient to do so, the *status quo* between the parties pending the appeal to Her Majesty in Council, see 14 Cal. 293.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to enforce orders of Queen in Council.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply[1] by petition, accompanied by a certified copy[2] of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same[3]; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees[4].

When any moneys expressed to be payable in British currency

[1] within twelve years from the time when the present right to enforce the order arises, Act XV of 1877, sched. II, art. 180: 8 Cal. 218.

[2] 5 Cal. 329. This provision is directory only, and intended to insure that proper information on the subject of any order in Council shall be supplied to the Courts in India. L. R., 10 Ind. App. 4: 9 Cal. 482 (S. C.).

[3] Exercise of judicial discretion in giving such directions may amount to a judgment under sec. 15 of the Charter of 1865, so that an appeal will lie, ibid., but see 6 Cal. 594.

[4] Sec. 610 cannot be construed so as to extend the provisions of sec. 253 to a case not expressly provided for by the legislature, 12 Cal. 405–406, dissenting from 2 All. 604. Where *A* sued for possession of lands and mesne profits, and by an order in Council made on appeal the suit was remitted to India, and it was ordered that the Court below should direct possession to be given to *A*, this order carries by its own force the right to the mesne profits, 13 Moo. I. A. 490. As to the effect of an order in Council carrying by its own force interest, see 7 Moore, P. C. (N. S.) 314

are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being[1] fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal against order relating to execution.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Power to make rules.

612. The High Court[2] may, from time to time, make rules consistent with this Act to regulate—

(*a*) the service of notices under section 600;

(*b*) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;

(*c*) the amount and nature of the security required under sections 602, 605 and 609;

(*d*) the testing of such security;

(*e*) the estimate of the cost of transcribing the record;

(*f*) the preparation, examination and certifying of such transcript;

(*g*) the revision and authentication of translations;

(*h*) the preparation of indices to transcripts of records, and of lists of the papers not included therein;

(*i*) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,

and all other matters connected with the enforcement of this chapter.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto[3].

[1] i.e. for the financial year in the course of which the moneys are to be paid.

[2] See sec. 614 infra.

[3] See *N. W. P. and Oudh Gazette*, 14 Dec. 1878, p. 1937: Judicial Circular of the Panjáb Chief Court, No. 111: *Oudh Gazette*, 30 Aug.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder. Legalisation of existing rules.

614. In sections 595 and 612, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court. Recorder of Rangoon.

615. The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal. Construction of Ben. Reg. III of 1828, sec. 4, cl. 5.

616. Nothing herein contained shall be understood— Saving of Her Majesty's pleasure,

(*a*) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee. and of rules for conduct of business before Judicial Committee.

And nothing in this chapter applies to any matter of criminal[1] or admiralty or vice-admiralty jurisdiction[2], or to appeals from orders and decrees of Prize Courts[3].

1873, Part I. p. 33. As to appeals from Ajmer and Merwára, *Gazette of India*, 24 June 1882, Part II. p. 498.

[1] Supra, p. 206, note 2, and Addenda.

[2] For the rules as to appeals to the Queen from Vice-Admiralty courts, see W. Macpherson's *Practice of the Judicial Committee*, 174, and Appx. 119: 3 & 4 Wm. IV, c. 41: 6 & 7 Vic. c. 38: 26 & 27 Vic. c. 24, secs. 22, 23, and 30 & 31 Vic. c. 45, sec. 18.

[3] See ibid. 173, 185, and 3 & 4 Will. IV, c. 41, secs. 2, 3, 31. As to the procedure in Prize causes, see 27 & 28 Vic. c. 25.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

Reference of question to High Court.

617. If before or on the hearing of a suit or an appeal in which the decree is final[1], or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may pass decree contingent upon opinion of High Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and

[1] Where a Munsif, thinking he had no jurisdiction to hear a certain suit, made an order returning the plaint for presentation to the proper Court, and the appellate Court (the District Judge) referred the matter to the High Court, the High Court refused to entertain the reference, as the Munsif's order was not a 'final' decree, nor would any order of the appellate Court passed at the then stage of the suit, disposing of the plea of jurisdiction, be a 'final' decree, 7 All. 816. See also 11 Bom. 57: 12 Bom 30.

such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Costs of reference to High Court.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter etc. decrees of Court making reference.

622. The High Court may call for the record of any case[1] in which no appeal lies to the High Court, if the Court[2] by which the case was decided appears to have exercised a jurisdiction not vested in it by law[3], or to have failed to exercise a jurisdiction so vested[4], or to have acted in the exercise of its jurisdiction illegally[5] or with material irregularity[6];

Power to call for record of cases not appealable to High Court.

[1] This includes an interlocutory order, 14 Cal. 769, and all adjudications which might be appealed or revised subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively, see 7 All. 661, per Mahmúd J.

[2] 3 N. W. P. 60: 9 Bom. 97.

[3] 9 Mad. 145: 10 Mad. 68.

[4] 11 Bom. 488, following 9 Bom. 432: 9 Mad. 508.

[5] The illegality here intended has been held to be 'an obviously perverse use of jurisdiction, or authority, which could not be justified even on the premisses assumed or found by the Judge, or else some palpable transgression of rule in the collection of the premisses, an error, in either case, not admitting of reasonable question,' 7 Bom. 359. But in 8 All. 112 two learned Judges thought that 'illegally' here referred to the grounds specified in clauses (*a*) and (*b*) of sec. 584. Illustrations are: admitting an application after the period of limitation has expired, 7 All. 345; improperly raising an issue, 11 Bom. 435: making without jurisdiction an order to refund, 9 Mad. 437; erroneously deciding a question of valuation, affecting the court fee, 10 Bom. 610.

[6] These words of course do not apply to civil cases where the Court merely decides wrongly a case which it has jurisdiction to decide, 11 Cal. 6 (S. C., L. R., 11 I. A. 237): 9 Bom. 432: 7 All. 336, 345 and 407, or commits an irregularity not involving an injustice, 9 Bom. 97. A 'material irregularity' has been held to be a departure from a rule which has prevented an investigation being made such as would enable a right or duty to be established in the way contemplated by the Code, or which has given effect, or refused effect, to particular rights in ways quite different from what it prescribes, 7 Bom. 358; and see 6 All. 125, where the lower Court improperly refused to amend a decree which was at variance with the judgment. In 3 All. 205, Straight J. held that 'acted &c. illegally or with material irregularity' meant 'decided erroneously in point of law, or irregularly in a material particular in respect of procedure. The words certainly include

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and may pass such order in the case as the High Court thinks fit[1].

an irregularity of procedure affecting the merits, 13 Cal. 225.

[1] For other cases in which the High Court acted under sec. 622, see 8 Bom. 553, where it set aside an award made under the Land Acquisition Act with the aid of a biassed assessor; and 2 Mad. 264, where it set aside an order of the original Court confirming an execution-sale to a fraudulent partner.

For cases where the High Court declined to exercise jurisdiction under this section, see 5 Cal. 807: 7 Cal. 330: 7 All. 914: 8 All. 519: 9 Mad. 332 (a case on Mad. Act VIII of 1865, sec. 76). A party applying under sec. 622 for relief must show that he has not contributed by his own conduct to his being placed in the position in which he finds himself, 9 Mad. 452. As to the effect of delay in applying under this section, 9 Mad. 452: 4 All. 154.

This section is inapplicable to interlocutory proceedings, 4 All. 91: 5 All. 293, 294, or to the exercise of the discretionary power of a Court in granting or withholding sanction to a criminal prosecution, 3 All. 508, or a suit under the Religious Endowments Act, XX of 1863, 10 Mad. 98. See also as to sec. 622, 9 All. 104, 492: 10 Mad. 52, 518.

The provisions of the Suits Valuation Act, sec. 12, with respect to appellate courts, apply to courts exercising revisional jurisdiction under sec. 622 of the Code, Act VII of 1887, sec. 11, cl. (4).

As to the modifications in the Panjáb of sec. 622, see Act XVIII of 1884, sec. 70.

As to the seven general principles governing the High Court in the exercise of its visitatorial or superintending powers, see 7 Bom. 341.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT[1].

623. Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred[2];

Application for review of judgment.

(*b*) by a decree or order from which no appeal is hereby allowed; or

(*c*) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence[3] which, after the exercise of due diligence, was not within his knowledge[4] or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record[5], or for any other sufficient[6] reason[7], desires to obtain a review of the decree passed or order made against him,

may apply[8] for a review of judgment to the Court which

[1] This (rather than a suit) is the regular course of procedure to set aside a decree passed in pursuance of a compromise out of court, 10 Cal. 612. As to the difference between a review and an appeal, see 7 Moo. I. A. 304.

[2] By such person, 7 Suth. Civ. R. 166.

[3] 23 Suth. Civ. R. 323.

[4] 9 Ben. 187.

[5] 14 Cal. 627.

[6] i.e. sufficient to the Court to which application for review is made, 9 All. 36.

[7] The words 'sufficient reason' should be liberally construed, so as to do substantial justice between the parties, 11 Cal. 775. But the fact that a decision of a Divisional Bench has been overruled by the Full Bench is no such reason, 6 All. 292. A review cannot be allowed merely to enable the Court to reconsider its judgment upon the same evidence, 2 All. 505. While the discovery of a fresh authority may not entitle a party to a review, yet when a judge is satisfied that his judgment has proceeded upon an erroneous view of the law, this section allows him to review his judgment, 7 Mad. 307.

[8] within ninety days from the date of the decree or order, except when it is made by a Presidency High Court or by the Chief Court of the Panjáb in the exercise of original jurisdiction. In such case the period of limitation is twenty days, Act XV of 1877, sched. II, arts. 162 and 173: Act XVII of 1877, sec. 18.

passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred[1].

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party[2], except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review[3].

To whom applications for review may be made.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to[4] any Judge other than the Judge who delivered it[5].

Form of applications for review.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Application when rejected.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when granted.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion[6]:

Proviso.

Provided that—

(*a*) no such application shall be granted without previous notice[7] to the opposite party, to enable him to appear and be

[1] One against whom an *ex parte* decree has been made may apply under this section, 6 All. 65, and see 9 All. 61.

[2] 7 Bom. 287.

[3] The object is to prevent the possibility of having a case pending in two Courts at the same time, e.g. where a plaintiff partially succeeds and the defendant appeals and the plaintiff applies for a review in respect of the portion disallowed.

[4] This does not include 'heard and determined by,' 10 Cal. 80, dissenting from 4 All. 278; see 13 Cal. 231.

[5] Sec. 624 must be read as a proviso to sec 623, 8 Mad. 568: so when there has been a change of the presiding judge, no application can be made to the new judge, whether of the Court which passed the decree or of that substituted for it, except on the grounds stated.

[6] If he does not do so the judgment is not without jurisdiction, but the case should be remanded, 13 Suth. Civ. R. 439: 14 ibid. 237.

[7] See form, sched. IV, no. 178.

heard in support of the decree[1] a review of which is applied for; and

(*d*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof[2] of such allegation[3].

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application for review in Court consisting of two or more Judges.

628. If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

Application when rejected.

If there be a majority the decision shall be according to the opinion of the majority.

629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was

Order of rejection final.

Objections to admission.

(*a*) in contravention of the provisions of section 624,

(*b*) in contravention of the provisions of section 626, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit[4].

Where the application has been rejected in consequence of the failure of the applicant to appear, he may[5] apply for

[1] The words 'or order' seem omitted *per incuriam*.

[2] unless the other side does not object, see 22 Suth. Civ. R. 300.

[3] See infra, Act VII of 1888. sec. 59.

[4] There is no second appeal against an order passed on appeal under sec. 629, 11 Cal. 296.

[5] within fifteen days from the rejection, Act XV of 1877, sched. II, art. 160.

an order to have the rejected application restored to the file; and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

Registry of application granted, and order for re-hearing.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit[1].

[1] The Court has discretionary power either to re-hear the whole case or any particular point that it thinks fit, 9 Cal. 210, following 11 Moo. I. A. 499; and see 10 Bom. H. C. 360. As to reviews for clerical errors, see 6 Cal. 22.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*)[1]. Chapter to apply only to chartered High Courts.

632. Except as provided in this chapter the provisions of this Code apply to such High Courts. Application of Code.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs[2]. Recording judgments.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; Execution of decree before costs ascertained.

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation. Execution for costs subsequently.

635. Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses[3], except when the Court shall have in the exercise of the power conferred by its charter authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakíls and attorneys. Unauthorised persons not to address Court.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise Who may serve process of

[1] These Courts are at present established only at Calcutta, Madras, Bombay, and Allahabad.

[2] 9 All. 93. As to female paupers, see sec. 404, supra.

[3] 9 All. 613, 617.

High Court.

of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order, from time to time, directs.

Non-judicial acts may be done by Registrar.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Sections not applying to High Court in original civil jurisdiction.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (*a*) and (*b*), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

Power to frame forms.

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court[1].

Exemption of certain women from personal appearance.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process[1].

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege[2].

Power to exempt from personal appearance.

The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

Lists of persons exempted.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs[3].

Costs of commission.

642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Persons exempt from arrest under civil process.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and

[1] 9 Mad 100. As to the 'women' to which this section applies, see 24 Suth. Civ. R. 375 (unmarried Hindú girl of 12), and 8 ibid. 282.

[2] Marshall, 627.

[3] When the person exempted is a pauper, see sec. 404, supra.

recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter [1], and while returning from such tribunal [2].

Procedure in case of certain offences.

643. When in a case pending before any Court, there appears to the Court sufficient ground [3] for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476 or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law [4].

Use of forms in fourth schedule.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Language of subordinate Courts.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government, from time

[1] In the case of a witness there must be a *bonâ fide* belief that his attendance is required, 14 Ben. Appx. 13.

[2] 4 Mad. H. C. 145: 4 Mad. 317: 1 Cal 78: 5 Cal. 106.

Sec. 642 does not exempt from arrest for a contempt, 4 Ben. O. C. J. 91.

[3] 7 Suth. Civ. R. 824.

[4] 4 Mad. 325.

to time, to declare what language shall be the language of every such Court [1].

645 A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors [2]; and such assessors shall attend and assist accordingly. Assessors in causes of salvage, etc.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar [3]. Power of Registrars of Small Cause Courts to state cases.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals [4]. Miscellaneous proceedings.

[1] The Panjáb Government declared Urdu to be the language of its Courts; Circular No. 1-134, dated 21 Feb. 1863.

[2] They represent in India the two Trinity Masters who usually sit in England with the Judge of the Probate, etc. Division, when he tries admiralty actions. See as to the attendance of these Masters, Williams and Bruce, *Admiralty Practice*, 2nd ed. pp. 442, 528.

[3] See infra, Act VII of 1888, sec. 60.

[4] e. g. probate cases, whether contentious (vol. i. p. 457), or non-contentious, 8 Cal. 882; sales of under-tenures, 7 Cal. 165; winding-up companies, 9 All. 180; applications for the appointment of guardians and for the custody of infants, 9 All. 41; proceedings under the Divorce Act, 9 All. 41; 6 Bom. 416; proceedings under the Native Religious Endowments Act, XX of 1863, sec. 5, see 4 Mad. 295. As to proceedings in Revenue Courts, see 5 All. 406; 6 All. 170: in the Central Provinces, Act XVIII of 1881, sec. 19: in the Panjáb, Acts XVI of 1887, sec. 88; and XVII of 1887, sec. 117, cl. (2), (*b*). As to suits between landlord and tenant, see in the Lower Provinces, Act VIII of 1885, sec. 143: in Oudh, Act XXII of 1886, sec. 135: in the Central Provinces, Act IX of 1883, sec. 24.

Section 647 confers no right of appeal not expressly given elsewhere,

Admission of affidavits as evidence.

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence [1] of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

Procedure when person to be arrested or property to be attached is outside district.

648. Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code [2] not relating to the execution of decrees, and such person resides [3] or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdistion such person or property resides [3] or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him [4].

Rules applicable to all civil

649. The rules contained in chapter XIX shall apply to the execution of any judicial process for the arrest of a person

10 Bom. 433. Nor does it empower the Court to stay execution after passing a final unappealable decree and before granting an application for review, 9 All. 36.

[1] The Indian Evidence Act does not apply to affidavits presented to any Court or officer.

[2] This section does not authorise the Court to attach any property which it is not authorised to attach by any other part of the Code, though it permits the Court to transmit its order (where such order may be made) for execution beyond the local limits of its jurisdiction, 8 Mad. 20.

[3] Bare residence is sufficient to render him liable to arrest before judgment, 8 Mad. 205, where an officer proceeding from Burma to England stopt a few days at Madras on the way.

[4] See infra, Act VII of 1888, sec. 61.

or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding[1]. Process for arrest, sale or payment.

In the same chapter, the expression 'Court which passed a decree,' or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist[2] or to have jurisdiction to execute it[3], the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit[4].

650. The provisions of chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code. Application of rules as to witnesses.

650 A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: provided that the Courts issuing such summonses have been established or continued[5] by the authority of Service of foreign summonses.

[1] This includes the execution of a judgment entered up under sec. 86 of the Indian Insolvent Act (11 & 12 Vic. c. 21), 8 Bom. 511.

[2] These words refer to such cases as the following: where a Small Cause Court, having been in existence for a certain number of years, has afterwards been abolished by an order of the Local Government (Act XI of 1865, sec. 3); where a Sadr Amín who had jurisdiction throughout the whole of the district with a pecuniary jurisdiction exceeding that of a Munsif has been abolished as such, the officer who was Sadr Amín becoming the Munsif at head-quarters with a local jurisdiction limited to a single munsiff, usually that at head-quarters (see the repealed Act XVI of 1868, sec. 4, clause 2, and sec. 8), 6 Cal. 518, per Field J.

[3] This does not apply to the appellate side of the High Court, though it does not, as a general rule, execute its own decrees or orders, but directs them to be executed by one or other of the mufassal Courts subordinate to its jurisdiction, 6 Cal. 201. The words 'ceased.. to have jurisdiction to execute it' meet such cases as this: an Additional or Subordinate Judge attached to districts *A* and *B* having passed a decree in district *A* leaves *A*, and sits in district *B* under the provisions of the Bengal Civil Courts Act, sec. 15. Such a Court sitting in *B* has not ceased to 'exist,' but has ceased to have jurisdiction to execute that particular decree, 6 Cal. 519.

[4] Therefore, where the Court which passed the decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court or to the Court which, if the suit wherein the decree was passed were instituted at the time of applying, would have jurisdiction to try the suit, 6 Cal. 515.

[5] Act VII of 1888, sec. 62.

the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts[1].

The Governor General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

651. *Repealed by Act X of* 1886.

Power to make subsidiary rules of procedure.

652. The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law[2].

[1] The provisions of this section have been declared to apply to the Courts in Mysore, Macpherson's *Lists*, 1884, p. 58.

[2] See Rules of the High Court of Madras, Macpherson's *Lists*, 1884, pp. 115, 116, 117, 128. See also the *Bombay Government Gazette*, Part I, 4th Oct. 1877, p. 875; 11th Oct. 1877, p. 902; 29th Nov. 1877, p. 1030; 1st Aug. 1878, p. 477; 7th Nov. 1878, p. 702: the *N. W. P. and Oudh Gazette*, 6th March, 1880, Part II. p. 228; 11th Feb. 1882, Part II. p. 118; 19th Nov. 1881, Part II. p. 1162. For the rules made by the Chief Court of the Panjáb, see Macpherson's *Lists*, 1884, p. 467. For those made by the Judicial Commissioner of the Central Provinces, see his Circulars, vol. i. Part I, Procedure. For those made by the Judicial Commissioner of British Burma, see Macpherson's *Lists*, 1884, pp. 557, 558, 559. For rules to regulate the subordinate Courts of Coorg in exercising insolvency jurisdiction, see the *Gazette of India*, 29 July 1882, Part II. p. 592. As to Assam, see *Assam Gazette* for 11th Oct. 1879; *ibid.* 28th Feb. 1880; *ibid.* 6th March 1880.

See the clause added to sec. 652 by Act VII of 1888, sec. 63, infra.

THE FIRST SCHEDULE.

(*See Section* 3.)

ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X of 1877	The Code of Civil Procedure.	So much as has not been repealed.
XII of 1879	Amending Act X of 1877, etc.	Sections one to one hundred and three (both inclusive).
VII of 1880	Merchant Shipping ...	Section eighty-five.

THE SECOND SCHEDULE.

(*See Section* 5.)

Chapters and sections of this Code extending to Provincial Courts of Small Causes.

PRELIMINARY: Sections 1, 2, 3 and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 and 24 (both inclusive).

CHAPTER III.—Of Parties and their appearances, Applications and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission etc. of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

CHAPTER XVIII.—Sections 220, 221 and 222, of Costs.

CHAPTER XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).

CHAPTER XX.—Section 360, Power to invest certain Courts with Insolvency jurisdiction.

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs.

CHAPTER XXV.—Commissions.

CHAPTER XXVI.—Suits by Paupers.

CHAPTER XXVII.—Suits by and against Government or Government Servants.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of unsound mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.

CHAPTER XXXVI.—Appointment of Receivers.

CHAPTER XXXVII.—Reference to Arbitration, sections 506 to 526 (both inclusive).

CHAPTER XXXVIII.—Of Proceedings on Agreemant of Parties.

CHAPTER XLVI.—Reference to and Revision by High Court.

CHAPTER XLVII.—Of Review of Judgment, sections 623, 626 and 630.

CHAPTER XLIX.—Miscellaneous.

THE THIRD SCHEDULE.

(*See Section* 7.)

Bombay Enactments.

Bombay Regulation XXIX, 1827.
" " VII, 1830.
" " I, 1831.
" " XVI, 1831.
Act XIX of 1835.
" XIII of 1842.

THE FOURTH SCHEDULE.

(*See Section* 644.)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF AT

Civil Suit No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , he lent the defendant rupees repayable on demand [*or* on the day of].

2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[*If the plaintiff claims exemption from any law of limitation, say*:—

3. The plaintiff was a minor [*or* insane] from the day of till the day of].

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(*Title.*)

A. B. and *G. H.*, the above-named plaintiffs, state as follows:—

1. That on the day of 18 , at , the defendant received rupees [*or* a cheque on the Bank for rupees] from one *E. F.* for the use of the plaintiffs.

2. That the defendant has not paid [*or* delivered] the same accordingly.

3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.

2. That on the day of 18 , [*or*, on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.

3. That the commission and expenses of the defendant thereon amount to rupees.

4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs. annas therefor.

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at at the request [*or* by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.

2. That, in consideration thereof, the defendant promised [*or* became bound] to pay the same to the plaintiff on demand [*or as the case may be*].

3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , deceased, sold and delivered to the defendant [one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods].

2. That the defendant promised to pay rupees for the said goods on delivery [*or*, on the day of *some day before the plaint was filed*].

3. That he has not paid the same.

4. That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 18 , the said *E. F.* died.

6. That on the day of probate of the said will was granted to the plaintiff by the Court of

7. The plaintiff as executor as aforesaid [*Demand of judgment*].

[NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.]

No 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [sundry articles of house-furniture] but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[NOTE. The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the same to one *E. F.*

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff furnished to [*Mary Jones*] the wife of [*James Jones*] deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said *James Jones* refused to pay the same.

5. That the defendant is the executor of the last will of the said *James Jones.*

[*Demand of judgment.*]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold to *E. F.*, of , deceased, [*all the crop then growing on his farm in*].

2. That the said *E. F.* promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said *E. F.*

[*Demand of judgment.*]

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That on the day of the Civil Court of duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff Manager of his estate.

5. The plaintiff as Manager as aforesaid [*Demand of judgment.*]

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not accepted the goods or paid for the same.

4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for rupees with interest from the day of , at the rate of per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the same day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[*Demand of judgment.*]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods; see Act IX of 1872, section 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound No. , in the city of *or*, a farm known as , in *or*, a piece of land lying, *&c.*]

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

[*Demand of judgment.*]

[NOTE.—Where there has been no actual conveyance, say, in § 1, 'sold to the defendant the house, &c., and placed him in possession of the same.']

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No. , in the town of , *or* one hundred bighás of land in , bounded by the East Indian railroad, and by other lands of the plaintiff] for rupees.

2. That on the day of 18 , at , the plaintiff tendered [*or*, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[*Demand of judgment.*]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees, per year].

2. That from the [said day] until the day of 18 , the plaintiff served the defendant as his [clerk].

3. That the defendant has not paid the said salary.

[*Demand of judgment.*]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows : —

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].

2. That the defendant promised to pay rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 20.

FOR RENT RESERVED IN A LEASE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[*Or state the substance of the contract.*]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[*Demand of judgment.*]

Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years to hold from the day of 18 , at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant hired from the plaintiff [the house No. , street], at the rent of . rupees, payable on the first day of .

2. That the defendant occupied the said premises from the day of 18 to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[*Demand of judgment.*]

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(*Title.*)

A. B., the above-named plaintiff, executor of the will of *X. Y.*, deceased, states as follows :—

1. That the defendant occupied the [house No. , street], by permission of the said *X. Y.*, from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. , street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.

2. That, in consideration thereof, the defendant promised to pay [*or* that no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth] the sum of rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 24.

FOR FREIGHT OF GOODS.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff transported in [his barge, *or otherwise*] [one thousand barrels of flour, *or* sundry goods], from to , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [*or*, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 25.

FOR PASSAGE-MONEY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the], from to at his request.

2. That the defendant promised to pay the plaintiff rupees therefor. [*Or* that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees.]

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 26.

ON AN AWARD.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed].

2. That on the day of 18 , at , the said arbitrators warded that the defendant should [pay the plaintiff rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[NOTE.--This will apply where the agreement to refer is not filed in court.]

No. 27.

ON A FOREIGN JUDGMENT.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , in the State [*or* Kingdom] of , the Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. That the defendant has not paid the same.

[*Demand of judgment.*]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day 18 , the sum of rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[*Demand of judgment.*]

No. 29.

PAYEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees [days] after date.

2. That he has not paid the same [except rupees, paid on the day of 18].

[*Demand of judgment.*]

[NOTE.—*Where the note is payable after notice, for paragraphs* 1 *and* 2 *substitute*—]

1. That on the day of 18 , at , the defendant by his promissory note promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[*Where the note is payable at a particular place, say*—]

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. *A. & Co's*, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. *A. & Co.'s*] aforesaid, but has not been paid.

Written Statement of the Defendant.

IN THE COURT, &c.

C. D., the above-named defendant, states as follows:—

1. The defendant made the note sued upon under the following circumstances: The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 100,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [*or* to *E. F.* or order] rupees [days after date].

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]

2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or* and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 , the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees [payable days after date].

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff. [*Or*, that the said *E. F.* indorsed the same to the plaintiff.]

3, 4 and 5. [*Same as* 3, 4 *and* 5 *of the last preceding form.*]

[*Demand of judgment.*]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant.

2, 3 and 4. [*Same as in* 3, 4 and 5 *in Form No.* 33.]

[*Demand of judgment.*]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [*As in No.* 33.]

[*Demand of judgment.*]

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.

IN THE COURT OF AT

Civil Suit No.

A. B. of

against

C. D. of

E. F. of

and

G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees [months after date].

2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. That on the day of 18 , the same was presented [*or state facts excusing want of presentment*] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof.

5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees [days after date, *or* sight, thereof].

2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment*].

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say——]

1. That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.

2. That the plaintiff delivered the said bill to the said *E. F.* on

3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.

2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form, to the end of article* 1.]

2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight].

2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [*or* after date, *or* at sight] thereof, [and accepted by the said *G. H.* on the day of 18].

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the

day of 18 , at , requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof [*or otherwise*], and accepted by the said *I. J.* on the day of 18 . [*This clause may be omitted if not according to the fact.*]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 44.

SUBSEQUENT INDORSÉE AGAINST HIS IMMEDIATE INDORSER.

(*Title,*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.* on the day of 18 , at , requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same

[*Demand of judgment.*]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of one *I. J.* rupees days after sigh thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B. of
against
C. D. of
E. F. of
and
G. H. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant, *C. D.*, by his bill of exchange, now overdue, directed to the defendant, *E. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.* rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant,

required the defendant to pay to the plaintiff rupees after date [*or* days after sight] thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of [*or* had an interest in] the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [*or* which the plaintiff then promised to pay] executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [*or*, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was on the day of 18 , totally lost by the perils of the sea [*or otherwise*].

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO, LOST BY FIRE:—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed]; [*or*, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or*, as the case may be).

4, 5 and 6. [*As in paragraphs* 4, 5 *and* 6 *of the preceding form.*]

[*Demand of judgment.*]

No. 51.

ON FREIGHT:—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost [by the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [*As in Form No.* 49.]

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y. Z.*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [*or state its tenor as before*].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs* 5 *and* 6 *of the last preceding form.*]

[*Demand of judgment.*]

No. 54.

ON A FIRE-INSURANCE POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house, known as No. , street, in the city], at the time of its destruction [*or*, injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or*, greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.* hired from the plaintiff, for the term of years, the [house No. , street ,] at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add* : -]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B.—Plaints for Compensation for Breach of Contract.

No. 56.

For Breach of Agreement to convey Land.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at execute to the plaintiff a sufficient conveyance of [the house No. , street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof].

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant [*or*, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That the defendant has not executed any conveyance of the said property to the plaintiff [*or*, that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, *or any other defect of title*].

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

For Breach of Agreement to purchase Land.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighás of land in the village of for rupees.]

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [*or*, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument,] on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(*a*) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment.*]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver

[one hundred barrels of flour] to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*Demand of judgment.*]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in last preceding Form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of judgment.*]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ

the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 , offered so to do].

3. That the defendant [entered upon] the service of the plaintiff on the above mentioned day, but afterwards, on the day of 18 , he refused to serve the plaintiff as aforesaid.

[*Demand of judgment.*]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[*Demand of judgment.*]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal [1], a copy of which is hereto annexed.

[*Or state the tenor of the contract.*]

2. That after the making of the said agreement the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continues so to do.

[*Demand of judgment.*]

[1] The form given in Act XIX of 1850 requires the seal of the father or guardian.

No. 65.

By the Apprentice against the Master.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment*].

[*Demand of judgment.*]

No. 66.

On a Bond for the Fidelity of a Clerk.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[*Or*, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[*Or*, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment.*]

No. 67.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. , street], for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[*Demand of judgment.*]

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at , upon a debt due from the said firm to the said *E. F.*, and on the day of 18 ,] the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70

BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, *or*, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant entered upon certain land of the plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same.]

[*Demand of judgment.*]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[*Demand of judgment.*]

No. 73

FOR TRESPASS ON MOVEABLES.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [*or*, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, *or as the case may be*, and carried away the same and disposed of them to his own use]:

or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise, state the injury according to the facts*].

[*Demand of judgment.*]

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed [*or*, of one thousand barrels of flour].

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[*Demand of judgment*]

The Schedule.

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [*or*, rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [*or* the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

[*Demand of judgment.*]

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

[*Title*]

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [*or, state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered,* That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.]

[*Demand of judgment.*]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one *E. F.* was solvent and in good credit, and worth rupees over all his liabilities [*or*, that *E. F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to the said *E. F.* [rice] of the value of rupees [on month's credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or*, to deceive and injure the plaintiff].

4. That the said *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. Than on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[*Demand of judgment.*]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in

2. That ever since the day of 18 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4 That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[*Demand of judgment*]

No. 80.

FOR OBSTRUCTING A WAY.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2 That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, *or*, on foot] at all times of the year.

3. That on the day of 18 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or*, on foot, *or*, in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [*State special damage, if any.*]

[*Demand of judgment*]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or*, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*Demand of judgment*].

No. 81.

FOR DIVERTING A WATER-COURSE.

(*Title*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18 , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[*Demand of judgment.*]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*Demand of judgment.*]

No. 83.

FOR WASTE BY A LESSEE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant hired from him [the house No. , street] for the term of .

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors ; *or otherwise specify the injuries as far as possible*].

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

That on the day of 18 , at , the defendant assaulted and beat him.

The plaintiff prays judgment for rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows ;—

1. That on the day of 18 , at , the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage as the case may be*].

[*Demand of judgment.*]

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted the plaintiff, and imprisoned him for days [*or* hours] ; [*state special damage, if any, thus* :—

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be*].

[*Demand of judgment.*]

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at [*or*, near the station of ; *or*, between the stations of and], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus*:— 2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *&c., as in* § 3].

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at
The defendant is a merchant of

2. On the [23rd May, 1875], the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(*Title.*)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E. F.* and *G. H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. *E. F.* and *G. H.*].

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*], the following words concerning the plaintiff:—

[*Set forth the words used.*]

2. That the said publication was false and malicious.

[*Demand of judgment.*]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"Which said words, being translated into the language, have the meaning and effect following and were so understood by the persons to whom they were so published, that is to say [*here set out a literal translation of the libel in the language of the Court*].

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of

2. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*, *or otherwise how published*], the following words concerning the plaintiff:—

['*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.']

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[*Demand of judgment.*]

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* [*or*, sundry persons], the following words concerning the plaintiff: ['He is a thief'].

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

[*Demand of judgment.*]

No. 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff, ['He is a young man of remarkable easy conscience'].

2 That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[*Demand of judgment.*]

No. 93.

FOR MALICIOUS PROSECUTION.

[*Title.*]

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a magistrate of the said city, *or, as the case may be*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, *or*, hours, and gave bail in the sum of rupees to obtain his release].

2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*Demand of judgment.*]

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That *X. Y.* was the absolute owner [of the estate, *or*, the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees, *or*, of the house No. , street in the town of Calcutta, the estimated value of which is rupees].

2. That on the 'day of 18 , *Z.* illegally dispossessed the said *X. Y.* of the said estate [*or* share *or* house].

3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.

4. That the defendant withholds the possession of the estate [*or* share *or* house] from the plaintiff.

The plaintiff prays judgment:

(1) for the possession of the said premises;

(2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows:—

1. On the day of , the plaintiff by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims:

(1) possession of the said house and premises;

(2) rupees for arrears of rent;

(3) rupees compensation for the defendant's breach of his covenant to repair;

(4) rupees for the occupation of the house and premises from the day of 18 to the day of recovering possession.

No. 95.

BY THE TENANT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows:], the estimated value of which is rupees.

2. That on the day of 18 , the said *E. F.* let the said premises to the plaintiff for years, from

3. That the defendant withholds the possession thereof from the plaintiff.

[*Demand of judgment.*]

No. 96.

FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [*or* was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

No. 97.

FOR MOVEABLES WRONGFULLY DETAINED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [*or, state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant[*C. D.*] for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or*, That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]

4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation].

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

E.—Plaints in Suits for Special Relief.

No. 99.

For Rescission of a Contract on the Ground of Mistake.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bíghás].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bíghás].

The plaintiff prays judgment:

(1) for rupees, with interest from the day of 18 ;

(2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

For an Injunction restraining Waste.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is the absolute owner of [*describe the property*].

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. That on the day of 18 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

[*As in Form No.* 81.]

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY, THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [*or, state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the day of 18 , he deposited the same for safe keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

The plaintiff prays judgment:

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];

(2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff [*describe the property*] for [safe keeping].

2. That the defendant, *C. D.*, claims the same [under an alleged assignment thereof to him from the said *G. H.*].

3. That the defendant, *E. F.*, also claims the same [under an order of the said *G. H.* transferring the same to him].

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment:

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorized to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. *E. F.*, late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [*here insert nature of debt and security if any*].

2. The said *E. F.* made his will, dated the day of and thereof appointed *C. D.* executor [*or*, devised his estate in trust, &c., *or*, died intestate, *as the case may be*].

3. The said will was proved by the said *C. D.* [*or*, letters of administration were granted, &c.]

4. The defendant has possessed himself of the moveable [and immoveable, *or*, the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the day of

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(*Title.*)

[*Alter Form No.* 105 *thus*:—]

[*Omit paragraph* 1 *and commence paragraph* 2] *E. F.*, late of , duly made his last will, dated the day of and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 *substitute*—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 6 *substitute*—

The plaintiff prays that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*] or that, *&c.*,

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No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(*Title.*)

[*Alter Form No.* 105 *thus*:—]

[*Omit paragraph* 1 *and substitute for paragraph* 2] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff a legacy of rupees.

In paragraph 4, *substitute* 'legacy' *for* 'debt.'

Another Form.

Between *E. F.* ... *Plaintiff,*
and
G. H. ... *Defendant.*

E. F., the above-named plaintiff, states as follows:—

1. *A. B.* of *K.* in the duly made his last will, dated the [first day of March, 1873], whereby he appointed the defendant and *M. N.* [who died in the testator's life-time] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July, 1878], and his will was proved by the defendant on the [fourth day of October, 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

(1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

Between *E. F.* ... *Plaintiff,*
and
G. H. ... *Defendant.*

Written Statement of Defendant.

1. *A. B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees , and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January, 1880], and offered the plaintiff free

access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF , AT

Civil Suit, No.

A. B. of ... *Plaintiff,*

against

C. D. of the beneficiary [*or*, one of the beneficiaries] ... *Defendant.*

A. B, the above-named plaintiff, states as follows:—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or*, an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*].

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or*, of the proceeds of] the moveable and immoveable property conveyed [*or* assigned] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable, property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may show good cause to the contrary.

N. B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, *on the plaint by a legatee.*]

No. 109.

FORECLOSURE OR SALE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. By a mortgage-deed dated the day of 18 a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs

[*or* executors, administrators,] and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs. with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs; and (*c*) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(*Title.*)

[*Alter Form No.* 109 *thus*:—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, *substitute*—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, *substitute*—

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the above-named defendant, *C. D.*, he the said *C. D.* contracted to buy of [*or* sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part of which the said *C. D.* has had notice.

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [*or* to accept a conveyance and possession of the said property] and to pay the costs of the suit.

[*N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs* 2 *and* 3, *and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

No. 112.

SPECIFIC PERFORMANCE. (No. 2.)

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*];

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP[1].

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. He and the said *C. D.*, the defendant, have been for the space of years [*or* months] last past carrying on business together at within the jurisdiction of this Court, under certain articles of

[1] The plaint in a partnership suit should be framed on the lines of this form, and the accounts should be taken as prayed therein, 7 Calc. 432.

partnership in writing, signed by them respectively, [*or*, under a certain deed sealed and executed by them respectively, *or*, under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [*or* deed, *or* agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [*or* deed, *or* agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by of , pleader for the plaintiff, [*or* by].

[*N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution: but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

No. 114.

Forms of concise Statements.

[Code of Civil Procedure, section 58.]

The plaintiff's claim is	rs. for money lent [and interest].	Money lent.
The plaintiff's claim is of goods sold, and	rs., whereof rs. is for the price rs. for money lent, and rs. for interest.	Several demands.
The plaintiff's claim is	rs. for arrears of rent.	Rent
The plaintiff's claim is *the case may be*].	rs. for arrears of salary as a clerk [*or, as*	Salary, &c.
The plaintiff's claim is	rs. for interest upon money lent.	Interest.
The plaintiff's claim is	rs. for a general average contribution.	General average.
The plaintiff's claim is	rs. for freight and demurrage.	Freight, &c.
The plaintiff's claim is as a banker.	rs. for money deposited with the defendant	Banker's balance.
The plaintiff's claim is rs., money expended] as a pleader.	rs. for fees for work done [and	Fees, &c., as pleader.
The plaintiff's claim is *acter—as* auctioneer, cotton-broker, &c.].	rs. for commission earned as [*state char-*	Commission.

Medical attendance.	The plaintiff's claim is rs. for medical attendances.
Return of premium.	The plaintiff's claim is rs. for a return of premiums paid upon policies of insurance.
Warehouse-rent.	The plaintiff's claim is rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is rs. for the carriage of goods by railway.
Use and occupation of house.	The plaintiff's claim is rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is rs. for the hire of [furniture].
Work done.	The plaintiff's claim is rs. for work done as a [surveyor].
Board and lodging.	The plaintiff's claim is rs. for board and lodging.
Schooling.	The plaintiff's claim is rs. for the [board, lodging and] tuition of *X. Y.*
Money received.	The plaintiff's claim is rs. for money received by the defendant as pleader [*or* factor, *or* collector, *or &c.*] of the plaintiff.
Fees of office.	The plaintiff's claim is rs. for fees received by the defendant under colour of the office of .
Money overpaid.	The plaintiff's claim is rs. for a return of money overcharged for the carriage of goods by railway.
	The plaintiff's claim is rs. for a return of fees overcharged by the defendant as .
Return of money by stakeholder.	The plaintiff's claim is rs. for a return of money deposited with the defendant as stake-holder.
Money won from stakeholder.	The plaintiff's claim is rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is rs. for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud.	The plaintiff's claim is rs. for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is rs. for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is rs. for a return of money paid to the defendant for [work to be done, *or*, work left undone; *or*, a bill to be taken up, *or*, a bill not taken up; *or &c.*].
	The plaintiff's claim is rs. for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is rs. for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is rs. for money paid for rent due by the defendant.
Money paid on accommodation-bill.	The plaintiff's claim is rs. upon a bill of exchange accepted [*or* indorsed] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is rs. for contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.
Money paid for calls.	The plaintiff's claim is rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is rs. for money payable under an award.
Life-policy.	The plaintiff's claim is rs. upon a policy of insurance upon the life of *X. Y.*, deceased.
Money-bond.	The plaintiff's claim is rs. upon a bond to secure payment of rs. and interest.

The plaintiff's claim is rs. upon a judgment of the Court in [the Empire of Russia]. Foreign judgment.

The plaintiff's claim is rs. upon a cheque drawn by the defendant. Bills of exchange, &c.

The plaintiff's claim is rs. upon a bill of exchange accepted [*or* drawn, *or* indorsed] by the defendant.

The plaintiff's claim is rs. upon a promissory note made [*or* indorsed] by the defendant.

The plaintiff's claim is rs. against the defendant, *A. B.*, as acceptor, and against the defendant, *C. D*, as drawer [*or* indorser] of a bill of exchange.

The plaintiff's claim is rs. against the defendant as surety for the price of goods sold. Surety.

The plaintiff's claim is rs. against the defendant, *A. B*, as principal, and against the defendant, *C. D.*, as surety, for the price of goods sold [*or* for arrears of rent, *or* for money lent, *or* for money received by the defendant, *A. B.*, as traveller for the plaintiff, *or, &c.*].

The plaintiff's claim is rs. for calls upon shares. Calls.

Indorsement for Costs, &c.

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

Damages and other Claims.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller. Agent, &c.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and rs. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*,] of the plaintiff [and rs. for money received as factor, *or, &c.*].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant [*or* plaintiff]. Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of *X. Y.* Arbitration.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution]. Assault, &c.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, *C. D.* By husband and wife.

The plaintiff's claim is for damages for assault by the defendant, *C. D.* Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff. Pleader.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture [*or*, a carriage] lent on hire, [and for wrongfully, *&c.*]. Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or* refusing] to pay the plaintiff's cheque. Banker.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .

Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*].

Claim for return of goods; damages. The plaintiff's claim is for return of household furniture, [*or, &c.*,] or their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

Defamation. The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

Wrongful distress. The plaintiff's claim is for damages for improperly distraining.

[*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular.*]

Ejectment. The plaintiff's claim is to recover possession of a house, No. in Street, or of a farm called Blackacre, situate in the of in the of .

To establish title and recover rents. The plaintiff's claim is to establish his title to [*here describe property*] and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or* a business, *or* shares, *or, &c.*].

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.*

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship [*Royal Charter*], and freight of cargo [*or* for return of premiums].

[*This Form shall be sufficient whether the loss claimed be total or partial.*]

Fire-insurance. The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant. The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. Medical man.

The plaintiff's claim is for damages for injury by the defendant's dog. Mischievous animal

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants. Negligence.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

The plaintiff's claim is as executor of *A. B.*, deceased, for damages for the death of the said *A. B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants. Act XVII of 1855.

The plaintiff's claim is for damages for breach of promise of marriage. Promise of marriage

The plaintiff's claim is for damages for breach of contract to accept and pay for goods. Sale of goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or*, &c.].

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] land. Sale of land.

The plaintiff's claim is for damages for breach of a contract to let [*or* take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] the lease, with good-will, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or* for quiet enjoyment, *or*, *&c.*] in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* felling his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road or path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river]. Trespass on land.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house, *or* mine]. Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, *or* private way]. Way.

The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting water from] a water-course. Water-course, &c.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. Pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. Light

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. Patent.

Copyright. The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trademark. The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trademark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, *&c.*].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or*, &c.].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables *or*, *&c.*].

Injunction. [*Add to indorsement*]:—and for an injunction.

Mesne profits. [*Add to indorsement where claim is to land, or to establish title, or both*]:—

Arrears of rent. And for mesne profits.

And for an account of rents or arrears of rent.

Breach of covenant. And for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X. Y.*, of , deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the administrator of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his coheirs at law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.*, deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.*, as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the day of , made between [*parties*] [*or*, by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of rs. which by a deed of settlement, dated , was provided for the portions of the younger children of may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated and made between [*parties*] carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between [*parties*] set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

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No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of *C. D.*, late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [*or, as the case may be*].

2. *By an executor or legatee of a former will, or a next-of-kin &c. of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will dated the day of of *C. D.*, late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This summons is issued against you as the executor of the said pretended will [*or, as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of *C. D.*, late of , deceased, who died on the day of dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of *C. D.*, of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [*or, as the case may be*].

F.—MISCELLANEOUS.

No. 116.

Section 58 of the Code of Civil Procedure.

COURT of the of holden at

REGISTER OF CIVIL SUITS in the year 18 .

		Plaintiff.			Defendant.			Claim.			Appearance.			Judgment.			Appeal.		Execution.					Return of Execution.		
Date of presentation of plaint.	No. of Suit.	Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount or value.	When the Cause of Action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of appeal.	Judgment in Appeal.	Date of application.	Date of Order.	Against whom.	For what, and amount if money.	Amount of costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and date of every Return.

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witnesses, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

NOTE.—*If written statements are required, say*—You are [*or* such a party is, *as the case may be*] required to put in a written statement by the day of .

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any wit-

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly in-

ness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

structed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff, and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

NOTE.—*If written statements are required, say*—You are [*or* such a party is, *as the case may be*] required to put in a written statement by the day of

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No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedu .

No. of Suit.

IN THE COURT OF AT

Plaintiff.

Defendant.

To

(*Name, description and address.*)

WHEREAS [*here enter the name, description and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*If not specially required to appear in person, state*—'in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions'] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here;* 'and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day']; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which*

may be required by the plaintiff], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in the above suit is at present residing in , but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the day of 18 be forwarded for service on the said defendant, to the Court of with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

The day of 18 .

A. B. of

against

C. D. of

Read proceeding from the forwarding for service on in civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath *or*] affirmation of and it is ordered that the be returned to the with a copy of this proceeding.

L. S.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(*Title.*)

I, the undersigned defendant [*or* one of the defendants], disclaim all interest under the will of the said *E. F.* in the plaint, named [*or*, as heir-at-law, *or*, as next-of-kin, *or* one of the next-of-kin, of *E. F.*, deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [*or* deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [*or*, that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, *or*, that it appears by the said plaint that *G. H.* should have been a joint-plaintiff with the said *A. B.* in the said suit, *or*, *as the case may be*].

Or, that the plaintiff has conveyed his interest in the said mortgage [*or* right to redeem] to one *I. J.* [*or*, that I have conveyed or assigned to *H. L.* by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [*or*, *as the case may be*].

(*Signed*) *C. D.*,
Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B.

against

C. D., E. F., and *G. H.*

Interrogatories on behalf of the above-named *A. B.* [*or C. D.*] for the examination of the above-named [*E. F.* and *G. H., or A. B.*].

1. Did not, &c.
2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered .

The defendant *G. H.* is required to answer the interrogatories numbered .

No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B.

against

C. D.

Take notice that the plaintiff [*or* defendant] requires you to produce for his inspection the following documents referred to in your plaint [*or* written statement, *or* affidavit], dated the day of 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [*or* the defendant]. To Z.,

Pleader for the defendant [*or* plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS your attendance is required to on behalf of the in the above cause, you are hereby required [personally to appear before this Court] on the day of 18 , at the hour of A.M. [and] to bring with you or to send to this Court .

A sum of Rs. , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1). If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2). If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 126.

Another Form.

No. of Suit.

IN THE COURT OF AT

Plaintiff.
Defendant.

To

[*Name, description and address.*]

YOU are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff [*or* the defendant] in the above-mentioned suit, and to produce [*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*], and you are not to depart thence until you have been examined [*or* have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(*Title.*)

Claim for

THIS cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the[1] do pay to the the sum of Rs. , with interest thereon at the rate of per cent. per from to the date of realisation of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realisation.

[1] A decree against a legal representative should mention that it is against him in that character, I. L. R., 8 Bom. 309.

Costs of suit.

PLAINTIFF.	Rs.	A	P.	DEFENDANT.	Rs.	A.	R.
1. Stamp for plaint . ..				Stamp for power			
2. Do. for power				Do. petition . .			
3. Do. exhibits .. .				Pleader's fee			
4. Pleader's fees on Rs. .				Subsistence for witnesses			
5. Translation-fee				Service of process ..			
6. Subsistence for witness for attendance .				Translation-fee ..			
7. Commissioner's fee				Commissioner's fee ..			
8. Service of process							
9. &c.							
TOTAL ..				TOTAL			

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(*Title.*)

IT is ordered that it be referred to the Registrar [*or* Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [*or* Taxing Officer] do declare in court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [*or* Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into Court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said lien] be sold with the approbation of the Registrar [*or* Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE[1] FOR FORECLOSURE.

(*Title.*)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum which was on the day of last declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of .

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION SUIT.

Section 213 of the Code of Civil Procedure.

(*Title.*)

IT is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[*After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.*]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

[1] For 'Final Decree' the words 'Decree Absolute' are substituted by the Transfer of Property Act (IV of 1882), sec. 87, wherever that Act is in force.

7. And that if the *Registrar* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. *E. F.* be Receiver in the suit [*or* proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar [and shall give security by bond for the due performance of his duties to the amount of rupees].

9. And it is further ordered, that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(*a*) An inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(*b*) An inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;

(*c*) An account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered, that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered, that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered, that this suit [*or* matter] stand adjourned for making final decree to the day of .

[*Such part only of this order is to be used as is applicable to the particular case.*]

No. 131.

Final Decree in an Administration-suit by a Legatee.

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant do on or before the day of pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs.

for interest, at the rate of Rs. per centum per annum, from the day of to the day of amounting together to the sum of Rs.

2. Let the Registrar [*or* Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows :—

(*a*) The costs of the plantiff to Mr. , his attorney [*or* pleader], and the costs of the defendant to Mr. , his attorney [*or* pleader].

(*b*) And (*if any debts are due*) with the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;

2. And it is ordered, that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered, that the defendant do within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered, that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

(*a*) Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.* and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.

(*b*) Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.

(*c*) And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(*Title.*)

IT it declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette, &c.*

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership;

2. An account of the debts and liabilities of the said partnership;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure,

IN THE COURT OF AT

Civil Suit, No.

A. B. of

against

C. D. of

IT is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[*Or*, And that the remainder of the said sum of Rs. be paid to the said plaintiff [*or* defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [*or* plaintiff] do on or before the day of pay to the plaintiff [*or* defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

CERTIFIED that no [*or* partial, *as the case may be, and if partial, state to what extent*] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .

A. B. of
against
C. D. of

To

WHEREAS
has made application to this Court for execution of decree in Civil Suit No. 18 , this is to give you notice that you are to appear before this Court on the day of 18 , either in person, or by a pleader of this Court, or agent duly authorised and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered, by decree of this Court, passed on the day of 18 , in Suit No. of 18 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid:

DECREE.			
Principal			
Interest			
Costs			
Costs of decree			
Interest thereon ..			
Total of attachment ..			
TOTAL ..			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said , and unless the said shall pay to you the said sum of Rs. , together with Rs. the cost of this attachment, to hold the same until futher orders from this Court.

YOU ARE FURTHER COMMANDED to return this Warrant on or before the day of 18 , with an endorsement certifying

the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &C.

Section 263 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS in the occupancy of has been decreed to , the plaintiff in this suit: you are hereby directed to put the said in possession of the same, and you are hereby authorised to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18 in favour of for Rs. : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, to which the defendant is entitled, subject to any claim of the said , and the said is

hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To Defendant, and to , Manager of Company.

WHEREAS

has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 in favour of for Rs. : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely, or from receiving

payment of any dividends thereof; and you , the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(*Title.*)

To Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

SIR,—THE plaintiff having applied under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (*here*

state how the money is supposed to be in the hands of the person addressed, on what account, &c.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S.

Judge.

Dated the day of 18 .

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF ETC. OF MONEY, ETC. IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18 , passed on the day of 18 , in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in Currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to , and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said , and the remainder, if any, shall be paid to you, the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18 , this is to give you notice to appear before this Court on , the day of , 18 , either in person or by a pleader of the Court duly instructed, to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this court-house, and after making due proclamation[1], the property attached under a warrant from this Court dated the day of 18 , in execution of a decree in favour of in suit No. of 18 , or so much of the said property as shall realise the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

[1] This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

WHEREAS

has been the purchaser at a sale by auction in execution of the decree in the above suit of now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To and to

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of certain debt

due from you to you , that is to say , it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this , day of 18 .

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

and Manager of

Company.

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain shares in the above Company, that is to say, of standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 149.

ORDER CONFIRMING SALE OF LAND, ETC.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

WHEREAS the following land [*or* immoveable property] was on the day of 18 sold by the Bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed and no application has been made [*or* objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

THIS is to certify that has been declared the purchaser at sale by public auction on the day of 18 of in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

WHEREAS has become the certified purchaser of at a sale in execution of the decree in Civil Suit, No. of 18 ; and whereas such land is in the possession of you are hereby ordered to put the said the certified purchaser, as aforesaid, into possession of the said , and if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 152

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

Collector of

SIR,

In answer to your communication No. , dated representing that the sale in execution of the decree in this suit of and, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,

SIR,

Your obedient Servant,

L. S.

Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING ETC. EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS it appears to the Court that has without just cause resisted [*or* obstructed] the execution of the decree of the Court passed against on the day of 18 , in Civil Suit, No. of 18 , whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A.B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in No. of 18 , dated 18 , to pay to the plaintiff the Sum of Rs. as noted in the margin [1], and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and

Principal			
Interest			
Costs			
Execution			
TOTAL ..			

[1] The marginal bill is an essential part of the warrant, 5 All. 321.

manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF

B. No. . 18 . .

A. B. v. *C. D.*

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim for, *etc.*]

To Mr. *X. Z.*,
the Plaintiff's Pleader
Z.,
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the examination on interrogatories [*or* viva voce] of such witnesses and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application].[1]

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

[1] Not necessary where the commission goes to another Court.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; you are hereby appointed Commissioner for the purpose of [process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application].[1]

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

[1] Not necessary where the commission goes to another Court.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit; or if judgment be given against , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required ,

or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security which has failed to do ; these are to command you to attach the property of the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

Defendant.

IT is ordered that you the said be, and you are hereby, prohibited and restrained until the further order of this Court from receiving from the following property in the possession of the said that is to say to which the defendant is entitled, subject to any claim of the said and the said is hereby prohibited and restrained until the further order of this Court from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

Defendant.

IT is ordered that you the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from

alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

IT is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands belonging to the said defendant *or* debts, *as the case may be, describing them*] and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, etc.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, ETC.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D of

To Defendant and to

Manager of Company.

IT is ordered that

, the defendant, be, and

hereby, prohibited and restrained, until the further order of the Court, from making any transfer of

shares being

in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by , Pleader of [*or* Counsel for] the plaintiff, *A. B.*, and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this cause on the day of , *or* the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof, [*if after notice and defendant not appearing. add*, and also the evidence of] as to service of notice of this motion upon the defendant, *C. D.*]. This Court doth order that an injunction be awarded to restrain the defendant, *C. D.*, his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing

of this motion mentioned], being No. 9, Oilmongers Street, Hindúpur, in the Taluq of and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:*—] to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question, dated on or about the , *etc.*, mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion until the hearing of this cause, or until the further order of this Court.

[*In Copyright cases*] to restrain the defendant, *C. D.*, his servants, agents or workmen from printing, publishing, or vending a book, called , or any part thereof, until the, *etc.*

[*Where part only of a book is to be restrained*] to restrain the defendant, *C. D.*, his servants, agents or workmen from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint [*or* petition and evidence, *etc.*,] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [*or* which is contained in page to page both inclusive] until the , *etc.*

[*In Patent cases*] to restrain the defendant, *C. D.*, his agents, servants and workmen, from making or vending any perforated bricks (*or as the case may be*) upon the principle of the inventions in the plaintiff's plaint [*or* petition, *etc.*, *or* written statement, *etc.*,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

[*In cases of Trade-marks*] to restrain the defendant, *C. D.*, his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or, as the case may be*] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, *etc.*] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the etc.

[*To restrain a partner from in any way interfering in the business*] to restrain the defendant, *C. D.*, his agent, and servants, from entering into any contract, and from accepting, drawing,

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endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership-firm of *B. & D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B.* and *D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the, etc.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF AT

A. B. of

against

C. D. of

TAKE notice that I, *A. B.*, intend to apply at the sitting of the Court at aforesaid, on the day of for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, *or* from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, *or as the case may be*].

Dated this day of 18 .

To *C. D.*

A. B.

[*N.B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.*]

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby (subject to your giving security to the satisfaction of the *Registrar*) appointed Receiver of the said property

under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

YOU are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration

at the rate of per

cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this

day of 18 .

L. S.

Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF . AT .

Civil Suit, No. of .

A B. of

against

C. D. of .

KNOW all men by these presents, that we, *I. J.* of &c., and *K. L.* of &c., and *M. N.* of &c., are jointly and severally bound to *G. H.*, *Registrar* of the Court of in Rs. , to be paid to the said *G. H* or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert the object*].

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said *O. P.* [*or, as may be*] at such periods as the Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.
K. L.
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(*Title.*)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of who is to make his award in writing and submit the same to this Court, together with all proceedings, depositions and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent

accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this of 18 .

L. S.

Judge.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

NO. OF SUIT ,

IN THE COURT OF AT

Plaintiff.

To Defendant.

[*Here enter the defendant's name, description and address.*]

WHEREAS [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under chapter XXXIX of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the payee [*or* endorsee] of a bill of exchange [*or* hundí *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundí or promissory note, and all endorsements upon it.*]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c. as in Register.*) Plaintiff—Appellant.

(*Name, &c., as in Register.*) Defendant—Respondent.

[*Name of Appellant*] [plaintiff *or* defendant] above-named appeals to the High Court at [*or* District Court at , *as the case may be*] against the decree of in the above suit dated the day of , for the following reasons, namely, [*here state the grounds of objection.*]

No. 174.

REGISTER OF APPEALS.

Section 548 of the Code of Civil Procedure.

COURT (*OR* HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES in the year 18 .

Date of Memorandum.	No. of Appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.			Judgment.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what or Amount.

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant*, v. , *Respondent*.

APPEAL from the of the Court of

dated the day of 18 .

Respondent.

To

TAKE notice that an appeal from the decree of in this case has been presented by and registerod in this Court, and that the day of 18 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

[NOTE.—*If a stay of execution has been ordered, intimation should be given of the fact of this notice.*]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT .

, *Appellant*, v. , *Respondent*.

APPEAL from the of the Court of dated the day of 18 .

Memorandum of Appeal.

, *Plaintiff*.

, *Defendant*.

Plaintiff [*or* defendant] above-named appeals to the Court at against the decree of in the above suit, dated the day of 18 , for the following reasons, namely;

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 , before , in the presence of for the appellant, and of for the respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by . The costs of the original suit are to be paid by

GIVEN under my hand, this day of 18 .

L. S.

Judge.

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 587 of the Code of Civil Procedure.

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what or Amount.

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED

Section 626 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Plaintiff*, v. , *Defendant*.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF AT

A. B. of

against

C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, *A. B.* [*or C. D.*], have hitherto employed as my pleader *G. H.* of in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is *J. K.* of

A. B. [*or C. D.*]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [*place of office* [from *ten* till *four* except on [*here insert the day on which the office will be closed*], when the office will be closed at *one*.

APPENDIX.

The following list of places outside British India, in which the Code of Civil Procedure is in force, is probably incomplete.

Haidarábád Assigned Districts.

The whole Act, except sec. 185, is in force in the Haidarábád Assigned Districts, *Gazette of India*, 5th May, 1883, Part I, p. 200. A list of the rules made under it will be found in Macpherson's *Lists of British Enactments in force in Native States*, 1885, pp. 52, 53.

Bangalore.

Mysore.

The whole Act, except chapter XLV and secs. 430–433, 586, 631–638, is in force, with some modifications, in the civil and military station of Bangalore. For the rest of Mysore, the Mahárájá has passed a regulation (II of 1884) applying the Code with modifications.

Rájputána.

The whole Act is in force in the parganas in the Rájputána Agency under British administration (Todgarh, Dewair, Saroth, Chang, and Kot-Karana):

Quetta.

In the district of Quetta, the Code is to be 'taken as a general guide in the administration of civil justice.'

Cantonments.

The whole Act except sec. 185 is in force in the cantonment of Sikandarábád, with certain modifications (Macpherson's *Lists*, ubi supra, pp. 150–153). The whole Act is in force in the cantonments of Dísah, Nímach and Ábu. The whole Act, except chapter XLV, is in force in the cantonment of Naogaon.

Railways.

As to Railways constructed in or passing through Native States see Macpherson's *Lists*, 1885, pp. 271–274.

Akalkót.

The whole Act is in force in Akalkot and the jágír territories of the State of Játh.

Zanzibar.

By the Zanzibar Order in Council of 1884, the Code is made applicable to Zanzibar as from the commencement of the Order. Subject to the other provisions of the Order, the Code has effect as if Zanzibar were a District in the Presidency of Bombay; the Consul-General is deemed the District Judge of the district, and his Court the District Court or principal civil court of original jurisdiction in the district; the High Court of Bombay is deemed to be the highest civil court of appeal for the district and the Court authorised to hear appeals from the decisions of the District Court; and the powers both of the Governor-General in Council and the Local Government under those enactments shall be exercisable by the Secretary of State, or with his previous or subsequent assent, by the Governor-General of India in Council.

INTRODUCTION TO THE EVIDENCE ACT.

'EVIDENCE,' in the language of English and Indian lawyers, is that which is offered by litigants in order to convince the Judge that the facts alleged by them are true, or so probable that he ought under the circumstances to act upon the supposition that those facts are true. Evidence sufficient to produce the desired conviction is said to amount to 'proof.'

Need of a law of evidence.

Besides framing substantive laws (such as those contained in the first volume of this work) and establishing forms of judicial procedure, all civilised states have found it necessary (1) to limit the discretion of judges in declaring facts proved or disproved, (2) to provide for speedy decisions and at the same time to guard the judges from error, (3) to preclude needless vexation and expense in coming to such decisions, and (4) to preclude injury to the State or the public[1]. It will be found that in India as in England all rules relating to Evidence and Proof are intended to attain one or other of these objects. Thus, to limit the discretion of judges we have the rules that a judge must not decide a fact on his own personal knowledge, and that nothing may be proved save a fact in issue or a fact relevant to the issue. To provide for speedy decisions we have the rules as to burden of proof, presumptions, and judicial notice. To guard these decisions so far as possible from error we have the rule that the best evidence should be produced. To preclude vexation and expense there are the rules as to witnesses and admissions. To preclude injury to the State or the public we have the rules as to affairs of State and information as to the commission of offences.

In framing a law of Evidence, especially one that has to be administered by non-professional judges, the legislature should have especial regard to the following four matters: (1) the completeness and intelligibility of the system, (2) its harmony with the substantive law, (3) the customs and habits of the society for which it is intended, (4) the standard of truth among the population.

How far these matters have been attended to by the Indian legislature, and how much remains to be done in this direction, will appear from the following remarks, which, first, give a sketch

[1] See Best's *Principles of the Law of Evidence*, 7th ed §§ 38, 41, 47, 49.

of the Indian legislation relating to evidence from 1793 to the present time; then point out the principal discrepancies between the present Indian and the English laws of evidence; thirdly, mention certain omissions in Act I of 1872, which contains the bulk of the Indian rules on the subject; and, lastly, state some local peculiarities which should be borne in mind when that Act is criticised or revised.

I. *Legislation respecting Evidence.*

Legislation respecting the Indian law of evidence.

Since the establishment of the Supreme Courts in Calcutta, Madras and Bombay, and probably since the establishment of their predecessors the Recorders' Courts, the English rules of evidence have always been followed in the Presidency towns, and several of the reforms made in England by Parliament were from time to time applied to the Supreme Courts by the Governor-General in Council. Thus Act IX of 1840 and Act VII of 1844 abolished incompetency on the ground of crime or interest. And Act XV of 1852 enabled parties to give evidence except in criminal proceedings and proceedings for adultery or breach of promise.

But in the Mufassal, where the Courts were not required to follow the English law as such, though they were not debarred from following it where they regarded it as the most equitable, there prevailed, in addition to a few rules expressly prescribed by the Regulations made between 1793 and 1834, a vague customary law of evidence, partly drawn from the Hedáya and the Muhammadan law-officers; partly from English text-books[1] and the arguments of the English barristers who occasionally appeared in the provincial Courts; partly from the lectures on law delivered since 1855 in the Presidency towns.

Bengal Regulations as to evidence.

There is little in the old Regulations applicable to evidence. Under Ben. Reg. III of 1793, sec. 15, a bond must be proved by two witnesses to the signature unless the consideration is proved. But much documentary evidence was received without any proof unless objected to, such as copies of judicial proceedings appearing to be authenticated by the signature of the proper officer, and copies of English correspondence from the Collectors or other Government officers, similarly authenticated. Even copies of copies were so received[2].

[1] or text-books written by English lawyers practising in India, such as Mr. J. B. Norton, late Advocate-general of Madras, or Mr. Goodeve, formerly of the Calcutta bar.

[2] First report of commissioners appointed to consider the reforms of the judicial establishments etc. of India. Appendix B, no. 3, p. 199.

Rules as to witnesses, corresponding generally with those contained in the present Codes of Criminal and Civil Procedure, were made by the following Bengal Regulations: IV of 1793, secs. 6 and 14: IX of 1796, secs. 2, 3, and 4: IV of 1797, sec. 7: VIII of 1803, sec. 25: L of 1803, secs. 2, 3 and 4: III of 1812, sec. 2: XXIII of 1814, secs. 33 and 73; and XXIV of 1814, sec. 11.

Madras Regulations.

In Madras also rules relating to this subject were contained in several Regulations[1]. Exhibits not stamped as required by law were excluded by Madras Regs. VI of 1816, s. 35, and VII of 1816, s. 15. Evidence declared by the Muhammadan law-officer to be inadmissible is dealt with by Regs. I of 1825, s. 8, and VI of 1829, s. 2.

Bombay Regulations.

In Bombay some rules as to witnesses in civil proceedings were made by Bom. Reg. IV of 1827[2], and rules as to witnesses in criminal proceedings were prescribed by Regs. XII[3] and XIII[4] of the same year. All persons who had arrived at years of discretion and were of sane mind were made competent witnesses by Bom. Regs. IV of 1827, s. 33, and XIII of 1827, s. 35. And the section last mentioned contains provisions (wanting in the present law) as to irrational animals and inanimate objects produced in elucidation of the case.

Acts as to evidence.

X of 1835.

The first Act of the Governor-General in Council which dealt with evidence as above defined was Act X of 1835, which applied to all the Courts in British India, and declared that Acts passed by the Governor-General in Council might be proved by the production of the Government Gazette purporting to contain it. This was followed by eleven enactments passed at intervals during the next twenty years, which effected various small amendments of the law. Thus:—

XIX of 1837.

Act XIX of 1837, which applied to all the Courts in British India, declared that no person should be incompetent as a witness by reason of conviction for any offence.

V of 1840.

Act V of 1840 permitted Hindús and Muhammadans to make in judicial proceedings affirmations instead of the oaths or declarations then in use. This Act did not extend to the Supreme Courts. But it was extended to their successors, the High Courts, by Act XVIII of 1863, s. 9; and Act VI of 1872 made three amendments of the law relating to judicial oaths. It enabled every witness who objected to

[1] 3 of 1802, sec. 7; 4 of 1802, sec. 18; 5 of 1802, sec. 16; 7 of 1802, sec. 18; 7 of 1809, sec. 22; 12 of 1809, sec. 8; 4 of 1816, secs. 15, 16; 5 of 1816, secs. 4, 5; 6 of 1816, secs. 28–34; 7 of 1816, secs. 4, 5; 10 of 1816, secs. 15, 16; 14 of 1816, sec. 9; 4 of 1821, sec. 10; and 8 of 1832, sec. 3.

[2] secs. 23, 29, 30, 32, 34–41, 45, 48, 49, 51, 90, 91, 92.

[3] secs. 15, 25, 34, 35, 43, 50.

[4] secs 29, 34, 36, 38, 39.

take an oath to make a simple affirmation. It declared that no irregularity in administering an oath or making an affirmation should invalidate the proceedings. It provided that if a witness was willing to take an oath in a form binding on persons of his own race or persuasion, and not repugnant to justice or decency, the Court might administer such an oath. Evidence given under the sanction of such an oath was made, as against the witness, conclusive proof of the matter stated. This Act was repealed and re-enacted by Act X of 1873, which consolidated the law on the subject of judicial oaths, and abolished official oaths except such as were prescribed by statutes which the Indian legislature could not repeal.

IX of 1840. Act IX of 1840 declared that if a witness in any of the Supreme Courts were objected to on the ground that the verdict or judgment would be admissible in evidence for or against him, he might be examined, and the verdict or judgment should not be so admissible. The object of this enactment, which was taken from 3 & 4 Will. IV. chap. 42, was to render less frequent the rejection of witnesses on the ground of interest.

VII of 1844. Act VII of 1844 declared that within the local jurisdiction of the Supreme Court no person should be excluded from giving evidence by reason of crime or interest. But this was not to render competent parties, or those on whose immediate behalf an action was brought or defended.

XV of 1852. Act XV of 1852 made several amendments in the law of evidence as administered in the Supreme Courts. It established the competency of parties to give evidence, except in criminal proceedings and proceedings for adultery or breach of promise of marriage. It enabled the judges to compel parties to allow inspection of documents. It made acts of State and judicial proceedings provable by certified copies without proof of seal or signature. It made the register of British ships and certificates of registry admissible without proof of signature. It dispensed with the production of the record of a conviction or acquittal.

XIX of 1853. Act XIX of 1853 extended several of these reforms to the civil courts of the East India Company in the Bengal Presidency. It made parties to suits competent as witnesses, abolished incompetency on the ground of interest and relationship, enabled husband and wife to give evidence for or against each other, declared that a party might be compelled to give evidence and produce documents (sec. 5), exempted from production witnesses' title-deeds and documents relating to affairs of State (secs. 19, 20), and declared that a party was not bound to produce documents, not material nor relevant, nor any writing which had passed between him and his

professional adviser. It privileged communications between clients and their professional advisers, and enabled the Court to compel any person present to give evidence and produce documents as if he were summoned. Section 26, rendering absconding witnesses liable for damages, is the only part of this Act which has not been repealed.

This was the state of the law down to 1855. But in that year the Indian legislature passed Act II of 1855 (*for the further improvement of the law of evidence*), which was introduced by Sir Lawrence Peel and carried by Sir James Colvile. This Act, though totally devoid of arrangement, was skilfully worded, and contained many valuable provisions, which applied to all Courts in British India. It declared that judicial notice should be taken of all Regulations passed before 22 April, 1834, all Acts of the Governor-General in Council, public Acts of Parliament, the Court's own members and officers, the names, titles and authorities of the Governor-General and other specified officers, divisions of time, geographical divisions, war and peace, the existence, title and national flag of States recognised by the British Government (secs. 2–6), government gazettes (secs. 7, 8), recitals in laws of facts of a public nature (sec. 9), advertisements purporting to be published by authority (sec. 10). Courts might refer to books, maps, and charts (secs. 6 and 11). Foreign codes and reports were made admissible as evidence of foreign law (sec. 12). Maps made under the authority of government or of any public municipal body, when not prepared for the purpose of any litigated question, were admitted without further proof (sec. 13). The only persons incompetent to testify were declared to be children under seven years and insane persons, who appeared incapable of receiving just impressions of the facts respecting which they were examined, or of relating them truly (sec. 14). A simple affirmation was substituted for oaths or solemn affirmations in the case of children and persons of defective religious belief (secs. 15, 16). No one was to be incompetent from interest or relationship (sec. 18). Parties to civil suits might be examined as witnesses (sec. 19). Husbands and wives were declared competent in every civil proceeding to give evidence for or against each other (sec. 20). Witnesses were exempted from producing documents relating to affairs of State or held by them for any other person who would not be bound to produce them if in his own possession (sec. 21). Parties were exempted from producing documents not relevant to the case of the party requiring production, and confidential correspondence with legal advisers (sec. 22). Barristers, attorneys and vakils were not, without their clients'

II of 1855.

Act II of 1855 continued.

consent, to disclose professional communications (sec. 24). Persons present in court were bound to give evidence though not subpœnaed (sec. 25). Persons summoned merely to produce documents were exempted from personal attendance (sec. 26). The evidence of one witness was made sufficient proof, except in cases of treason (sec. 28); but the Act did not dispense with corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury. Dying declarations were made admissible though the declarant expected to recover (sec. 29). A party was allowed with the leave of the Court to cross-examine and discredit his own witness (sec. 30). Certain former statements of witnesses were made admissible to corroborate their testimony (sec. 31). Witnesses were bound to answer criminating questions, but the answer was not to be used against them unless they wilfully gave false evidence (sec. 32). A witness might be asked whether he had been convicted of any crime (sec. 33), and he might be cross-examined as to previous statements made by him in writing (sec. 34). Copies by a copying machine were to be deemed correct (sec. 35). Secondary evidence might be received where an original document was out of reach of process (sec. 36). Documents unnecessarily attested might be proved as if unattested (sec. 37). The admission of a party to an attested instrument of its execution by himself was made as against him *prima facie* proof of such execution (sec. 38). Entries made against interest or in the course of business were declared in certain cases admissible in the lifetime of the person making them (sec. 39). Entries in the course of business were in certain cases made admissible for the purpose of identifying the payer or receiver (sec. 40). Receipts were made admissible against certain persons other than the giver (secs. 41, 42). Certain books and other documents were made admissible as corroborative evidence (secs. 43, 44). Witnesses were allowed to refresh their memory by certain documents or copies thereof (secs. 45, 46). In cases of pedigree, declarations of bastards and intimate acquaintances were admitted (sec. 47). On the question of the genuineness of a signature, etc., comparison of an undisputed signature etc. was allowed (sec. 48). A power of attorney purporting to have been executed before a notary public etc. might in certain cases be proved by its production (sec. 49). The despatch and receipt of a letter might be proved by letter-books and the receipt-book (secs. 50, 51). An official document admissible by law was made *prima facie* evidence without proof of any seal etc. which it was directed to have (sec. 56). Lastly, the improper admission or rejection of evidence was not to be ground for a new trial where there was other evidence to justify

the decision (sec. 57). These provisions were repealed and re-enacted by the Indian Evidence Act, 1872.

Act X of 1855 (*to amend the law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay*) provided, amongst other things, that a person not obeying a summons to attend and give evidence or produce a document should be liable for damages in a civil action (sec. 10). This provision is still in force. X of 1855.

Act VIII of 1859 (secs. 149–182), like the present Code of Civil Procedure, contained provisions as to summoning witnesses (secs. 149–160), examination of parties (secs. 161–166), attendance of witnesses (secs. 167–171), examination of witnesses in court (secs. 172–174), and commissions to examine witnesses (secs. 175–182). VIII of 1859.

Act XXV of 1861—the first edition of the Code of Criminal Procedure—contained provisions as to confessions to, or in the custody of, the police; the diaries of police-officers; the examinations of the accused, the civil surgeon, and dead witnesses; the reports of chemical officers, and dying declarations, which have been re-enacted in the Evidence Act or in the present Code. It also prescribed rules as to the summoning and examination of witnesses and the record and interpretation of their depositions, resembling those contained in Act X of 1882. XXV of 1861.

Act XV of 1869 provides facilities for obtaining the evidence and appearance in court of prisoners, and for service of process upon them. XV of 1869.

It thus appears that down to 1872 the mufassal Courts had hardly any fixed rules of evidence save those contained in Act XIX of 1853 and II of 1855. The Commissioners appointed in England to prepare a body of substantive law for India (ignoring the fact that their commission did not comprise adjective law) accordingly framed a draft code, which in October 1868 was introduced by Mr. (afterwards Sir H.) Maine, and referred to a Select Committee, as a Bill to define and amend the law of evidence. This Bill was published and circulated to local authorities in the usual manner. But it was pronounced by some competent persons to be unsuited to India. It was far from complete: it was ill-arranged: it was not elementary enough for the officers for whose use it was designed; and it assumed an acquaintance with the law of England which could scarcely be expected from them. A new Bill was therefore prepared by Mr. (now Sir James) Stephen, Mr. Maine's successor, which was printed, circulated, and very freely criticised. Mr. Stephen accordingly recast it, and it ultimately I of 1872 (the Indian Evidence Act).

passed as Act I of 1872 (the Indian Evidence Act). This enactment purports to consolidate, define, and amend the whole law of Evidence with the following three exceptions:—

(*a*) the law of evidence applying to affidavits presented to any Court or officer:

(*b*) the law of evidence applying to proceedings before an arbitrator; (see 4 Cal. 231):

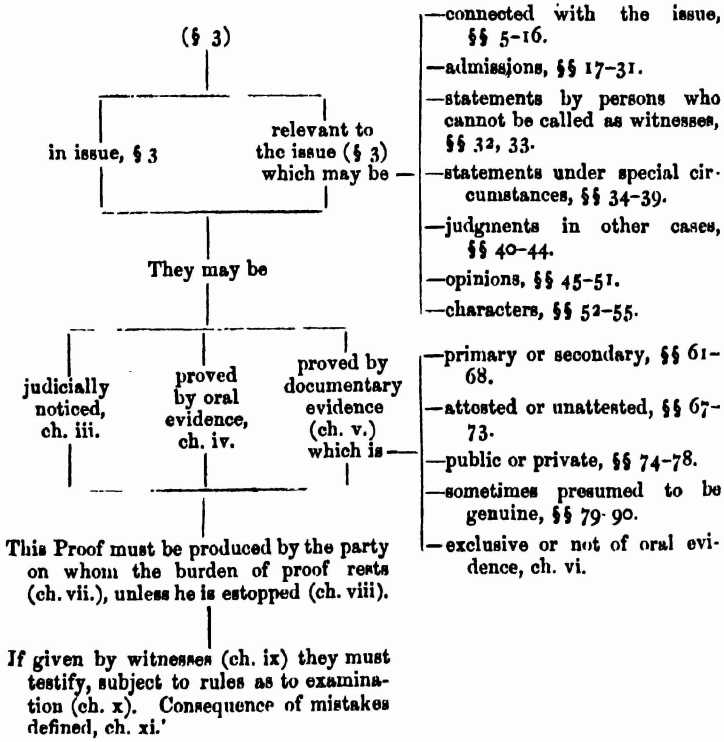
(*c*) the rules of Evidence contained in any Statute, Act, or Regulation in force in any part of British India, and not expressly repealed by the Indian Evidence Act of 1872.

Arrangement of the Evidence Act.

The Act is divided into three Parts, the first, entitled 'Relevancy of Facts,' and containing besides some sections on relevancy, the short title, repealing clause, definitions, and other preliminary matter; the second, entitled 'On Proof'; the third, 'Production and effect of Evidence.'

The following tabular scheme of the Act is taken from Sir James Stephen's edition, Calcutta, 1872. The numbers are those of the chapters and sections which treat of the matter referred to.

'The object of legal proceedings is the determination of rights and liabilities which depend on facts



The Act contains 167 sections, many of which are obviously suggested by Mr. Taylor's well-known work on Evidence[1]. Of the residue some are taken, with slight alterations, from Act II of 1855[2]; others from the Code of Criminal Procedure of 1861[3]; others from the Commissioners' draft above-mentioned[4]. The remaining ten sections, 6–16, deal with the subject of the relevancy of facts in judicial evidence, and are, in Sir James Stephen's own words, 'by far the most important, as they are the most original part of the Evidence Act, as they affirm positively what facts may be proved, whereas the English law assumes this to be known, and merely declares negatively that certain facts shall not be proved[5].'

Sources of the Act.

The sections on relevancy.

But it will appear on examination that these sections were framed under the erroneous supposition that relevancy means the connexion of events as cause and effect: that they do not give the theory of relevancy in its simplest form[6]: that they do not show in themselves the principle on which they have been founded: that one of them (sec. 8), so far as it deals with the admissibility of evidence of statements, has nothing to do with relevancy strictly so called: that two of them (secs. 10 and 12) are special rules covered by other sections; and that other two of them (secs. 7, 11) are so drawn as to permit evidence of matter wholly irrelevant.

Section 11.

As to section 11, the following remarks of Mr. Justice West may be cited. 'This section,' says that able Judge, 'is expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connexion with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and so far reaching, that thus to take the section in its widest admissible sense, would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a law of Evidence is to restrict the investigations made by Courts within the bounds pre-

[1] See 4 Bom. 581, per West J., and, for an example, sec. 92.

[2] Thus sec. 167 is copied from Act II of 1855, sec. 57. From the same Act also are derived secs 18, 37, 57, clauses 1, 2, 7, 9, and 13: secs. 81, 83, 84, 118, 120, 123, 124, 126, 129, 131 and 162.

[3] Secs. 25, 26, 27 are copied from Act XXV of 1861, secs. 148, 149, 150.

[4] Sec. 57, clauses 8, 10, 11, and sec. 12, as to judicial notice, are taken from the Commissioners' draft, secs. 36 and 37.

[5] *The Indian Evidence Act*, Calcutta 1872, p. 55.

[6] As Sir James Stephen himself says (*I. E. Act*, p. 55): 'They are designedly worded very widely, and in such a way as to overlap each other. Thus a motive for a fact in issue (sec. 8) is part of its cause (sec 7). Subsequent conduct influenced by it (sec. 8) is part of its effect (sec. 7). Facts relevant under sec. 11 would in most cases be relevant under other sections.'

scribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the inquiry proceeded[1].' Similar remarks may be made as to the words in section 7, 'or which constitute the state of things under which they happened.'

Section 7.

Mr. Whitworth's rules as to relevancy.

Sir James Stephen himself admits, with praiseworthy candour, that his theory 'was expressed too widely in certain parts, and not widely enough in others[2];' and in a pamphlet, published in Bombay in 1875, Mr. G. C. Whitworth, of the Bombay Civil Service, proposed to replace them by the following four rules:—

Rule I.—No fact is relevant which does not make the existence of a fact in issue more likely or unlikely, and that to such a degree as the Judge considers will aid him in deciding the issue.

Rule II.—Subject to Rule I, the following facts are relevant:—

(1) Facts which are part of, or which are implied by, a fact in issue; or which show the absence of what might be expected as a part of, or would seem to be implied by, a fact in issue;

(2) Facts which are a cause, or which show the absence of what might be expected as a cause, of a fact in issue;

(3) Facts which are an effect, or which show the absence of what might be expected as an effect, of a fact in issue;

(4) Facts which are an effect of a cause, or which show the absence of what might be expected as an effect of a cause, of a fact in issue.

Rule III.—Facts which affirm or deny the relevancy of facts alleged to be relevant under Rule II are relevant.

Rule IV.—Facts relevant to relevant facts are relevant.

Mr. Whitworth then takes the forty-nine illustrations given in the Evidence Act to the sections treating of relevancy, and shows that those illustrations are applicable to his own rules. He thus, in Sir James Stephen's opinion, 'corrected and completed,' 'in a judicious manner,' the theory expressed in the Act; and in the earlier editions of the *Digest of the Law of Evidence*, Sir James Stephen gives the following definition of relevancy, as taken, with some verbal alterations, from Mr. Whitworth's pamphlet:—

Sir James Stephen's definitions of relevancy.

'Facts, whether in issue are not, or relevant to each other when one is, or probably may be, or probably may have been—

the cause of the other;

the effect of the other;

[1] 11 Bom. H. C. 91, per West J.

[2] See his *Digest of the Law of Evidence*, 5th ed. p. 155.

an effect of the same cause;

a cause of the same effect:

or when the one shows that the other must or cannot have occurred, or probably does or did exist, or not;

or that any fact does or did exist, or not, which in the common course of events would either have caused or have been caused by the other;

provided that such facts do not fall within the exclusive rules contained in Chapters III, IV, V, VI; or that they do fall within the exceptions to those rules contained in those chapters.'

For this, in the fifth edition of his *Digest*, Sir James Stephen has substituted the following definition as a convenient practical rule:—'The word "relevant" means that any two facts to which it is applied are so related to each other that according to the common course of events one, either taken by itself or in connexion with other facts, proves or renders probable the past, present, or future existence or non-existence of the other.'

Act I of 1872 repealed Act II of 1855 *in toto*; and soon after the former Act came into force it was found that it had thus inadvertently abolished the power given by sec. 12 of the elder enactment to courts, commissioners and arbitrators to administer oaths. Act XVIII of 1872 was accordingly passed to revive this power and to make sixteen other comparatively trifling amendments. XVIII of 1872.

Act III of 1887 extended to Revenue officers the privilege conferred on the magistrates and police by sec. 125 of Act I of 1872. III of 1882.

The Evidence Act has been, as will appear from the footnotes, and still more from commentaries such as Mr. Field's, been the subject of a large number of judicial decisions, which have pointed out many defects both in form and substance—defects which, it may be supposed, caused Parliament to declare Act I of 1872 inapplicable to European Courts Martial held in India[1], and thus to make an important exception to the rule that the *lex fori* governs the laws of evidence. The Indian legislature, however, has hitherto only passed two Acts expressly to amend it, namely, XVIII of 1872 and III of 1887, the former of which merely corrected some slips in drafting, and the latter merely extended to Revenue officers the privilege above mentioned. But the following lists of the special and local enactments which are saved by section 2 of the principal Act will be found to comprise a large number of laws which have been made since 1872 and which, together with the beneficent legislation of the Indian judiciary,

Defects in the Evidence Act.

Amending Acts.

Special and local laws.

[1] See 44 & 45 Vic. c. 58, §§ 127, 128.

recorded in the Indian law-reports, supply many of the omissions in Act I of 1872.

SPECIAL LAWS.

Special laws dealing with Evidence.

Apprentices (XIX of 1850, sec. 2).
Bills of lading (IX of 1856, sec. 3).
Census (XIV of 1880, sec. 4).
Companies (VI of 1882, secs. 41, 54, 60, 77, 87, 92, 155, 177 (*h*), 198, 236).
Contract (IX of 1872, secs. 245, 246).
Copyright (XX of 1847, sec. 3).
Criminal tribes (XXVII of 1871, secs. 6, 7).
Distressed seamen (XIII of 1876, sec. 3).
Divorce (IV of 1869, sec. 51).
Emigration (III of 1876, secs. 33, 54, 90).
European vagrants (IX of 1874, secs. 25, 33).
Factories (XV of 1881, sec. 16).
Foreigners (III of 1864, sec. 2).
Foreign jurisdiction (XXI of 1879, sec. 5).
Forests (VII of 1878).
Forfeitures (XXV of 1857, sec. 6, IX of 1859, secs. 16, 18).
Indian Marine (XIV of 1887, secs. 62, 68).
Inland steam-vessels (VI of 1884, secs. 37–40).
Land-acquisition (X of 1870, secs. 6, 14).
Land-improvement loans (XIX of 1883, sec. 8).
License-tax (II of 1886, sec. 28).
Marriage (III of 1872, sec. 14, XV of 1872, secs. 61, 80).
Married women (XXXI of 1854, sec. 11).
Merchant seamen (X of 1841, sec. 22, I of 1859, secs. 44, 46, 89, 108, 111, XIII of 1876, sec. 3).
Merchant shipping (V of 1883, secs. 12, 14, 15, 16, 32, (cl. 2)).
Native Articles of War (V of 1869, arts. 111, 112, 113, 122, 124, 128, and see V of 1875, sec. 1).
Native passenger ships (X of 1887, secs. 13, 34, 43, 44, 50, 52).
Negotiable instruments (XXVI of 1881, secs. 105–107, 118–122, 134–137).
Oaths (X of 1873, sec. 11).
Passengers by sea, (XII of 1885, sec. 6, cl. (2)).
Penal servitude (XXIV of 1855, sec. 14, cl. (3)).
Petroleum (XII of 1886, secs. 14, 21, cl. (3)).
Ports and port-dues (XII of 1875, secs. 54, 55).
Powers of attorney (VII of 1882, sec. 4).
Presidency Banks (XI of 1876, sec. 18).

Printing presses and books (XXV of 1867, secs, 7, 8).
Probate and Administration (X of 1865, secs. 242, 243: V of 1881, secs. 59, 61).
Public gambling (III of 1867, secs. 10, 11).
Registration of births, deaths and marriages (VI of 1886, secs. 9, 25, 35).
Registration of documents (III of 1877, secs. 49, 77).
Registration of societies (XXI of 1860, sec. 19).
Religious societies (I of 1880, sec. 9).
Savings banks (V of 1873, sec. 8).
Scheduled Districts (XIV of 1874, secs. 4–8).
Sea-customs (VIII of 1878, sec. 185).
Stamps (I of 1879, secs. 31, 34, 37–41, 50.)
Telegraphs (XIII of 1885, sec. 5).
Tramways (XI of 1886, sec. 6, cl. (4), 28, 29).
Trustees and mortgagees (XXVII of 1866, sec. 44).
Volunteers (XX of 1869, sec. 6).
Waste-lands (XXIII of 1863, sec. 8).
Wills, Execution of (X of 1865, sec. 55).

Local Laws.

(a) *Madras Presidency.*

Local laws dealing with Evidence.

Ábkári (Mad. Act I of 1886, secs. 44–49, 51, 64).
Arrears of revenue (Mad. Act II of 1864, secs. 38, 57).
Forests (Mad. Act V of 1882, sec. 56).
Land-revenue, Madras Town (Mad. Act VI of 1867, sec. 20).
Local Boards (Mad. Act V of 1884, sec. 163, cl. (3)).
Madras Pier (Mad. Act VII of 1871, sec. 6).
Municipal Act, Madras Town (Mad. Act I of 1884, secs. 426, 434).
Salt laws (Mad. Act I of 1882, secs. 15, 16, 17, and 19).

(b) *Bombay Presidency.*

Gambling (Bom. Act III of 1866, sec. 9).
Gaols (Bom. Act II of 1874, secs. 48, 51).
Khoti settlement (Bom. Act I of 1880, secs. 12, 17, 29).
Land-revenue, Bombay City (Bom. Act II of 1876, secs. 19, 29, 40).
Land-revenue Code (Bom. Act V of 1879, sec. 149).
Sindh Frontier (Reg. V. of 1872, secs. 3, 8).
Tramways (Bom. Act I of 1874, secs. 14, 29).

(c) *Lower Provinces.*

Arrears of land-revenue (Ben. Act VII of 1868, sec. 8).
Assessment of road cess (Ben. Act IX of 1880, sec. 95).
Chutiá Nágpur Tenures (Ben. Act II of 1869, sec. 26).
Drainage (Ben. Act VI of 1880, sec. 27).
Irrigation (Ben. Act III of 1876, secs. 16, 22).
Pilots, trial of (VI of 1883, sec. 1).
Recusant witnesses (XIX of 1853, sec. 26).
Settlement operations (Ben. Reg. VII of 1822, sec. 19).
Sonthál Parganas settlement (Reg. III of 1872, sec. 25).
Tenancy (VIII of 1885, secs. 50, cl. (2), 51, 56, cl. (4), 76, cl. (2), 81, cl. (2), 101, cl. (3), 104, cl. (3), 105, cl. (2), 109, cl. (2), 115).

(d) *North-Western Provinces.*

Canals and drainage (VIII of 1873, sec. 69).
Gambling (III of 1867, secs. 4, 6, 9, 10).
Indigo suits (X of 1836, sec. 4. power to examine parties).
Jhánsí encumbered estates (XVI of 1882, sec. 9).
Kumaon and Garhwál Civil Procedure Rules (secs. 118, 127, 136–166, 205).
Land Revenue (XIX of 1873, secs. 149, 208–210, 212, 215, 216, 217, 226).
Mirzapur Stone mahál (V of 1886, sec. 12).
Recusant witnesses (XIX of 1853, sec. 26).
Rent (XII of 1881, secs. 82, 117B, 129, 130, 132, 133, 137–139, 178).
Tarai Regulation (IV of 1876, secs. 18, 19, 67, 68).

(e) *Panjáb.*

Courts (XVIII of 1884, sec. 62, cl. (2)).
European British minors (XIII of 1874, sec. 12).
Frontier Regulation (Reg. I of 1872, sec. 3).
Hazára Tenancy (Reg. III of 1873, sec. 6).
Land-revenue (XVII of 1887, secs. 19, 32, cl. (3), 42, 44, 151).
Municipalities (XIII of 1884, sec. 174, cl. (2)).
Tenancy (XVI of 1887, secs. 16, 89).
Tramways (I of 1886, sec. 16).

(f) *Oudh.*

Canals and drainage (VIII of 1873, sec. 69).
Estates (I of 1869, sec. 10).
European British minors (XIII of 1874, sec. 12).

Gambling (III of 1867, secs. 4, 6, 9, 10).
Record of evidence (XVIII of 1876, sec. 19).
Land-revenue (XVII of 1876, secs. 197, 217).
Laws (XVIII of 1876, secs. 7, 8, presumption as to right of preemption; 19, taking evidence).
Recusant witnesses (XIX of 1853, sec. 26).
Rent (XXII of 1886, secs. 70, 97, cl. (1)).
Taluqdárs' relief (XXIV of 1876, secs. 14–16).

(*g*) *Central Provinces.*

European British minors (XIII of 1874, sec. 12).
Land-revenue (XVIII of 1881, sec. 92).
Record of evidence (XX of 1875, secs. 11, 12: II of 1872, sec. 2).
Tenancy (IX of 1883, secs. 5, 33, cl. (3), 80).

(*h*) *Burma.*

Arakan Hills, civil justice (Reg. VIII of 1874, secs. 32–38).
Boundaries (V of 1880, secs. 17, 19).
European British minors (XIII of 1874, sec. 12).
Gambling (XVI of 1884, sec. 8).
Municipalities (XVII of 1884, secs. 148, 151, 161).
Pilots (XII of 1883, sec. 14).
Record of evidence (XVII of 1875, sec. 91).
Ruby Regulation (Reg. II of 1887, sec. 7).
Upper Burma civil justice (Reg. VIII of 1886, secs. 48–54).

(*i*) *Coorg.*

European British minors (XIII of 1874, sec. 12).
Land-revenue (Reg. III of 1880, sec. 38).

(*j*) *Ajmer and Merwára.*

Courts (Reg. I of 1877, sec. 29).
European British minors (XIII of 1874, sec. 12).
Forests (Reg. VI of 1874, secs. 4, 6, 11).
Taluqdárs' relief (Reg. IV of 1872, secs. 29, 31).

(*k*) *Andaman and Nicobar Islands.*

Marriage (Reg. III of 1876, sec. 28).

(*l*) *Assam.*

European British minors (XIII of 1874, sec. 12).
Frontier Tracts (Reg. II of 1880, sec. 3).
Land and revenue (Reg. I of 1886, secs 141, 142).

Statutes relating to Evidence.

Contemporaneously with Indian legislation on the subject of Evidence, Parliament enacted several statutes dealing with the same subject, which applied to British India either expressly or as part of the British Empire. These are :—

13 Geo. III, c. 63, secs. 40, 41, 42 (depositions respecting offences etc. committed in India), 44 (depositions respecting causes of action arising in India), 45.

21 Geo. III, c. 70, sec. 6 (authenticated copies of orders of the Governor-General and Council).

24 Geo. III, c. 25, secs. 78 (depositions taken in India), 81 (examination *de bene esse* of witnesses upon interrogatories).

26 Geo. III c. 57, secs. 28 (taking evidence in India for parliamentary proceedings against Indian offenders), 38 (proof of bonds executed in India).

42 Geo. III, c. 85, sec. 3 (examination *de bene esse* of witnesses upon interrogatories).

1 Geo. IV, c. 101 (examination of witnesses in support of divorce bills), secs. 1, 2, 3.

3 & 4 Wm. IV, c. 41, secs. 7, 8, 9, 13, 19 (evidence before Judicial Committee).

6 & 7 Vic. c. 22 (unsworn testimony).

6 & 7 Vic. c. 94, sec. 3 (foreign jurisdiction).

6 & 7 Vic. c. 98, sec. 4 (slave-trade).

11 & 12 Vic. c. 21, secs. 73, 74, 77, 82 (evidence in insolvency cases).

14 & 15 Vic. c. 99, sec. 7 (proof of judicial proceedings of Indian Courts).

14 & 15 Vic. c. 40, sec. 11 (registers of marriage).

18 & 19 Vic. c. 104 (Chinese passenger ships), sec. 15.

19 & 20 Vic. c. 113 (evidence in relation to matters pending before foreign tribunals).

20 & 21 Vic. c. 85 (divorce and matrimonial causes), sec. 47.

22 Vic. c. 20 (taking evidence out of jurisdiction).

22 & 23 Vic. c. 63[1] (ascertaining law in force in one part of Her Majesty's dominions when pleaded in the Courts of another part).

24 Vic. c. 11 (ascertaining law of foreign countries when pleaded in Courts within Her Majesty's dominions).

31 & 32 Vic. c. 37 (documentary evidence).

33 Vic. c. 14 (naturalisation), sec. 12.

33 & 34 Vic. c. 52 (Extradition Act, 1870), secs. 14, 15, 24[2].

33 & 34 Vic. c. 102 (oaths of allegiance on naturalisation), sec. 1.

[1] See *Login* v. *Princess Victoria of Coburg*, 1 Jur. O.S. 109, 30 Beav. 632.

[2] See *R.* v. *Gane*, 9 Q. B. D. 93.

36 & 37 Vic. c. 60 (amending Extradition Act, 1870), secs. 4, 5.
39 & 40 Vic. c. 46 (slave-trade), sec. 3.
44 & 45 Vic. c. 58 (army), secs. 52, 125, 163, 164, 165, 180.
44 & 45 Vic. c. 69 (fugitive offenders), sec. 29.

II. *Differences between the English and the Indian Laws of Evidence.*

Having thus given a sketch of the legislation relating to Evidence in India, we have now to note the principal differences between the English and the Indian laws on this subject. For convenience of reference the order of the sections of the Indian Evidence Act will here be followed.

Terms of complaints.

1. In England the particulars of the complaint may not be disclosed by the witnesses for the prosecution, either as original or confirmatory evidence, and the details of the statement can only be elicited by the prisoner's counsel on cross-examination[1]. Under the Indian Act, sec. 8, illustrations *j* and *k*, the terms of the complaint are admissible as original evidence.

Evidence of conspiracy.

2. To prove the existence of a conspiracy, or to show that any person was a party to it, a letter giving an account of the conspiracy is admissible under the Indian Act, sec. 10, even though not written in support of it or in furtherance of it. The contrary rule is followed in England. (Taylor, §§ 593, 594.)

Confessions.

3. In India the inducement, etc. which renders a confession inadmissible must be one proceeding from a person in authority (Act I of 1872, sec. 24). In England it seems enough if the inducement is held out by any one in his presence and he by his silence sanctions its being made. (Tayl. § 873.)

4. In India it is necessary to prevent the police from torturing persons in their custody for the purpose of extracting confessions. The Evidence Act therefore declares that a confession made to a police-officer is absolutely inadmissible (even though no threat be used or false hope held out), and a confession made while in the custody of the police is inadmissible, unless made in the immediate presence of a magistrate (secs. 25, 26). There is no such exclusion in England.

5. In England the confession of an accused person is not evidence against any one but himself. Even when *A* is indicted for receiving stolen goods from *B*, a confession by *B* that he was guilty of the theft is no evidence of that fact as against *A*[2]. Under

[1] *R.* v. *Walker*, 2 M. & Rob. 212; and see Taylor, § 581.
[2] *R.* v. *Turner*, 1 Moo. C. C. 347.

the Evidence Act, however (sec. 30), where two persons are being tried jointly for the same offence, a confession by one may be taken 'into consideration' as against the other. It is hardly necessary to state that the Indian Courts have given this section a strict interpretation. Such a rule would be dangerous in any country; but it is especially so in India, where a culprit commonly endeavours to exculpate himself at the expense of his alleged accomplices, and where the object of the police is often, not merely to find out the criminal, but to prove criminality against a particular man whom it is desired to crush.

Dying declarations.

6. In England dying declarations are admissible only in criminal cases 'where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the declaration.' In India (sec. 32 and ill. *a*) they are admissible in civil suits as well as in criminal prosecutions for rape or any other offence. In England, to render a dying declaration admissible, the declarant must have been in actual danger of death, he must have been fully aware of this danger, and death must have ensued (Tayl. § 718). In India the statement is relevant, whether the person who made it was or was not at the time when it was made 'under expectation of death.'

Entries in course of business.

7. In England to make entries in the course of business admissible, they must be shown to have been made contemporaneously with the acts which they relate (Tayl. § 704). The Evidence Act (sec. 32, cl. 2) contains no such restriction. In England such entries are evidence only of those things which according to the course of business it was the duty of the person to enter, and are no evidence of independent collateral matters[1]. There is no such restriction under the Indian Act.

Pedigree-cases.

8. In England the declaration of an illegitimate member of a family would not be admissible in pedigree cases[2]. In India the English rule has been rescinded since 1855[3]. On this point the Evidence Act (sec. 32, cl. 5) merely requires that the declarant had special means of knowledge of the relationship, and that the statement was made before the question in dispute was raised. In India, therefore, the statements made by servants, friends and neighbours, as to relationship, and statements made by a deceased person asserting his own illegitimacy, would be admissible. How doubtful this is in England, see Taylor, § 637.

Statements by deceased persons.

9. Under the Evidence Act, sec. 32, cl. (7), statements made by deceased persons and contained in documents relating to any

[1] *Chambers* v. *Bernasconi*, 1 C. M. & R. 368: Tayl. § 685.

[2] See Act II of 1865 (sec. 47).

[3] *Doe* v. *Barton*, 2 M. & Rob. 28.

transaction by which any right was created, etc., are admissible upon questions of mere private rights. In England such evidence does not appear to be admissible. See Tayl. § 615.

Entries in public books.

10. In England, to render entries in public books or registers admissible, they must have been made promptly, or at least without such long delay as to impair their credibility, and in the mode required by law, if any has been prescribed (Tayl. § 1594). The Evidence Act (sec. 35) contains no such rule.

Maps.

11. Section 36 of the Evidence Act as to maps and charts, and sec. 38, as to proof of foreign laws, go somewhat beyond the English rules on these subjects. The Indian Act admits statements made in 'published maps or charts generally offered for public sale,' and in 'maps and plans made under the authority of Government.' It also permits books containing foreign laws to be directly referred to. A munsif's opinion on the state of the Scotch marriage-law, or the meaning of an article of the Code Napoleon, is perhaps not very likely to be correct. The Indian Act, however, dispenses with the necessity of calling professional or official experts to speak on the subject. As to the English rules, see Taylor, §§ 622, 1423, 1425.

Foreign laws.

Judgments *in rem*.

12. In India judgments *in rem* are conclusive in criminal, as well as in civil proceedings (Evidence Act, sec. 41). In England this seems doubtful; see Taylor, §§ 1680, 1681.

13. In England, a party to a suit would not be allowed to defeat a judgment by showing that in obtaining it he had practised an imposition upon the Court (Tayl. § 1713). Under the Evidence Act, however, there is no such restriction, section 44, as now worded, permitting any party to a suit or other proceeding to show that a judgment was obtained by his own fraud or collusion.

Opinions as to sanity.

14. The opinion of experts only is admissible under the Evidence Act (sec. 45) as to questions of sanity. It is otherwise in England, at least in the Probate Court, where witnesses to a will may give their opinion as to the sanity of the testator[1]. See Tayl. § 1416.

Previous convictions.

15. Under the Evidence Act (sec. 54) the fact that the accused person has been previously convicted of *any offence* is relevant, and may be proved in the first instance by the prosecution. When, therefore, a man is tried for forgery, or theft, or burning a ship to cheat insurance companies, the prosecution may prove that he was previously convicted of an assault, or of a dacoity, or of grievous hurt in that he, through motives of jealousy, cut off his wife's nose. On a trial for coining, evidence may be tendered of a conviction for adultery, which is a criminal offence under the Penal

[1] *Wheeler* v. *Alderson*, 3 Hagg. Ecc. R. 544, 604, 605.

Code; and when a man is tried for waging war against the Queen, proof may be given of a conviction for selling goods with a counterfeit trademark, or for keeping a gambling-house. The object of this strange enactment is expressly declared in the report of the Select Committee, to be to prejudice the prisoner; and the Indian legislature has thus enabled the prosecution to mislead an ignorant magistrate and stupid jurors and assessors into the belief that a man who had (e.g.) cut off his wife's nose would be more likely than other men to commit crimes involving fraud or dishonesty. In England, it is scarcely necessary to say that, except under the Prevention of Crimes Act, 1871 (sec. 19[1]), such evidence can be given only in reply to evidence of good character offered for the defence.

Judicial notice.

16. The provisions in the Evidence Act, sec. 57, clause (7), as to judicial notice of the names etc. of gazetted officers, and the provisions in the same section that 'the Court may resort for its aid to appropriate books or documents of reference,' are in advance of the English law on these subjects. The Act (sec. 61) permits the opinions of experts, expressed in any treatise commonly offered for sale, and the grounds of such opinions, to be proved by the production of the treatise, if the author is dead, etc. This also is in advance of English law. See Taylor, § 1482.

Certified copies of registers.

17. The Evidence Act (sec. 65) makes certified copies of registers of births, deaths, marriages, etc. admissible in criminal as well as in civil proceedings. In England, in criminal proceedings, the original registers must be produced: 3 & 4 Vic. c. 92, s. 17.

Attested instruments.

18. In England, when the validity of an instrument depends on its formal attestation, the attesting witness must always be produced (Tayl. § 1843). In India[2], the admission of a party to such an instrument of its execution by himself has, since 1855, been sufficient proof of its execution as against him.

Comparison of seals.

19. Under the Evidence Act, secs. 47 and 73, comparison of a disputed writing or seal with a genuine writing or seal may be made by witnesses or by the Court in criminal as well as in civil proceedings. There is no such provision in England as to seals. As to writings, see 17 & 18 Vic. c. 125, secs. 27, 103; and 28 & 29 Vic. c. 18, secs. 1 and 8.

20. Oral admissions of the contents of a document are not admissible as primary evidence under the Evidence Act (secs. 22,

[1] Previous convictions are proveable under this enactment only as against alleged receivers of stolen goods.

[2] See Act II of 1855, sec. 38: Act I of 1872, sec. 70.

91). In England, on the contrary, the parol admissions of a party, and his acts amounting to admissions, are received as primary proof against himself and those claiming under him, although they relate to the contents of an instrument, which are directly in issue in the cause (Tayl. § 410). As Parke B. said in *Slatterie* v. *Pooley*[1], what a party himself admits to be true may reasonably be presumed to be so. Oral admissions of contents of documents.

21. In England, the presumption of legitimacy may be rebutted by proof of the impotency of the husband. Under the Evidence Act (sec. 112) such proof cannot be given. Presumption of legitimacy.

22. Under sec. 118 of the Evidence Act, a child is competent to testify if it can understand the questions put to it, and give rational answers thereto. In England, a child, to be a competent witness, must believe in punishment in a future state for lying[2]. Competence of children.

23. Husbands and wives are competent witnesses for or against each other in criminal, as well as in civil proceedings (Act I of 1872, sec. 120). This is not so in England in criminal proceedings, except, of course, when an injury to person or property has been committed by the one against the other. (Tayl. §§ 1371, 1372.) Competence of husbands and wives.

24. In England, an arbitrator, except under very special circumstances, is privileged as to what passed in his mind when exercising his discretionary powers[3]. He has no such privilege under the Evidence Act, sec. 121. Privilege of arbitrator.

25. The privilege as to non-production of title-deeds, conferred by the Act, sec. 130, on witnesses who are not parties to the suit, though unsuitable to India, where there is so much of fraud and forgery, is more extensive than in England. For in England, where a title-deed has been partly set out, or where there is reason to suspect fraud, the production of title-deeds has been ordered (Fisher, secs. 583 et seq., 589). The Indian Act privileges the mortgage-deed, but in England see Fisher, secs. 593, 594. The Indian Act, lastly, ignores implied agreements or trusts to produce title-deeds, which are recognised by English law. Even in England Non-production of title-deeds.

[1] 6 M. & W. 669.

[2] There seems no good ground for holding with Sir James Stephen (*Digest*, note xl) that the statute 32 & 33 Vic. c. 68 applies to children. The Indian Act II of 1855, sec. 14, contained the sensible rule that children under seven years of age who appear incapable of receiving just impressions of the facts to be deposed to or of relating them truly ought not to be examined. This was repealed by Act I of 1872, and (apparently *per incuriam*) not re-enacted.

[3] *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R., 5 H. L. 418: Tayl. Ev. § 938.

the privilege is more efficient in screening fraud than in protecting honest purchasers or incumbrancers. The best and simplest course would have been to render all documents producible save those specially excepted by other sections of the Act.

Privilege of witness.

26. In England a witness is excused from replying to any question the answer to which would have a tendency to expose him or her, or his or her wife or husband, to any kind of criminal charge, or to any penalty or forfeiture[1]. In India, when the question is as to any relevant matter, the rule is the reverse; see Act I of 1872, sec. 132, which, however, provides that no such answer shall subject the witness to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Corroboration in cases of perjury, etc.

27. In England two witnesses are required in case of certain treasons[2], and corroborative evidence is required in the following cases: cases of perjury where there is only a single opposing witness[3]; bastardy cases where the mother is the only witness[4]; and suits for breach of promise of marriage[5]. In India a conviction for the offences analogous to treason may be obtained on the testimony of a single witness, and corroborative evidence is not required in any of the three cases last mentioned[6].

Impeaching credit of witness.

28. In England the credit of a witness may, amongst other ways, be impeached by evidence of facts contradictory of the evidence given by him. The express provision of the Indian Act, sec. 155, is less extensive. The witness's credit, it is provided, can only be impeached in certain specified ways, that is, by questions or by testimony going directly to his credit, not mediately through a contradiction of the particular matter deposed to by him in the case[6].

Prior statement of witness.

29. In England evidence of the prior statement of a witness is not generally admissible to corroborate his testimony. But under the Indian Act, sec. 157 (= Act II of 1855, sec. 3), such evidence is admissible if the statement was contemporaneous with the fact stated, or made before some competent authority. It is often important to inquire, even on the examination in chief, what statement a witness, and particularly a complainant, made immediately after the commission of the offence. In cases of dacoity, for instance, the complainant swears in court that he recognised

[1] Tayl. Ev. § 1453.

[2] See Tayl. Ev. § 952.

[3] Tayl. Ev. § 959.

[4] Tayl. Ev. § 964: the Indian proceedings analogous to bastardy cases take place under chap. xli of the Criminal Procedure Code.

[5] Tayl. Ev. § 964 A, 1353.

[6] 11 Bom. H. C. 169, per West J.

the accused at the time of the robbery, and that he was acquainted with them before. In such a case it is desirable to ascertain whether he immediately mentioned their names to the police, or whether he first identified them after suspicion had been thrown upon them in some other way. So in a well-known suit against a bank in Bombay, where a question arose as to the terms of a loan to Premchand Raichand, which had been agreed upon at a meeting of local financiers. These terms had not been reduced to writing and respectable witnesses greatly varied in stating them. A letter of the agent of the bank, written on the afternoon of the same day, addressed to the head-office in London, and giving a full account of what had taken place, was admitted on behalf of the bank in corroboration of his testimony.

Examination by Judge.

30. In England the Judge may recall a witness at any stage of a trial and put such legal questions to him as the exigencies of justice require. And in a criminal case, after examination of witnesses on the prisoner's behalf, if the Judge calls and examines a witness for the prosecution, the prisoner's counsel has a right to cross-examine again (*Reg.* v. *Watson*, 6 C. & P. 653, Taylor Ev. § 1477.) Under the Indian Act, section 165, the questions put by the Judge need not be legal, and the witness cannot be cross-examined without the leave of the Court.

Relaxing rules as to admissibility.

31. In England, in civil cases, the rules as to admissibility may at the trial be relaxed by consent of the parties[1]. The Indian Act gives no such power. The insertion of a provision for this purpose was suggested by Mr. Maine to the Indian Law Commissioners; but they replied that it would be superfluous, 'as there is nothing in the rules proposed which would interfere with the inherent right of parties so to consent.'

III. *Omissions in the Indian Evidence Act.*

When the Indian Evidence Act is next amended it seems desirable to supply the following omissions and to make the changes hereinafter suggested:—

Affidavits.

1. The Act (sec. 1) expressly declares that it does not apply 'to affidavits presented to any Court or officer,' words which include the answers to interrogatories. The Civil Procedure Code, sec. 647, empowers the High Courts to make rules providing for the admission 'in proceedings in any Court of civil jurisdiction other than suits and appeals,' of affidavits as evidence, and the Criminal Procedure Code, sec. 539, declares the person before whom affidavits for use on the criminal side of the High Court are to be sworn. But, apart from certain enactments as to the admission of

[1] There are exceptions as to secrets of State, certain attested instruments, etc.

affidavits, the applications to be supported by affidavit, and the answering of affidavits, there is no law as to testimony by affidavit except that contained in the Civil Procedure Code, secs. 194–197. These sections should be transferred to the Evidence Act and applied to both criminal and civil proceedings; and it should also be provided

(*a*) that the officer administering the oath shall give notice to every person making an affidavit, before the oath is administered, that he will be liable to cross-examination, and that he subjects himself to a penalty if the statement be wilfully false:

(*b*) that such officer shall also ask the deponent whether he has read the affidavit, and if the answer be that he has not, or cannot read, shall then cause him to read, or have it read to him distinctly, and, after giving the notice required by (*a*), cause him to sign his name or make his mark, opposite to which the officer shall write his name, and, where the deponent is illiterate or blind, add the certificate mentioned supra, p. 539, note 4.

Material evidence.

2. Except in sec. 32 (*b*), the second proviso to sec. 60, and sec. 65 (*d*), the Evidence Act is silent as to material evidence, such as, in a criminal case, the instrument with which, or the place in which[1], an offence has been committed: in civil cases, the mark on a tree, or the number of circles in the wood that has grown over the mark. The following sub-division might be added to the present definition of 'Evidence': '(3) all other material things inspected by, or produced for the inspection of, the Court, the jury, or the assessors, in order to prove or disprove a fact in issue. Such things are called "material evidence."' And the body of the Act should declare that, as a rule, material evidence requires oral or documentary evidence for its introduction.

Definitions.

3. The terms 'fraud' and 'collusion,' which occur in sec. 44, should be defined: so should 'signature,' which occurs in sec. 69; 'judge,' sec. 121; and 'public officer,' sec. 124.

4. Section 45 should be amended by inserting, after 'identity,' in each of the places where that word occurs, the words 'or genuineness.' At present the Act does not provide for admitting the opinion of an expert who, without comparison of writing, can state that a certain document is in a genuine or a feigned hand. See Tayl. Ev., §§ 1417, 1877.

5. A second explanation should be added to section 76, enumerating the public documents, which any person has a right to inspect.

[1] See the Code of Criminal Procedure, sec. 293. Under the Code of Civil Procedure, sec. 492, a local investigation may be made by the Judge in person.

6. The Act should provide for admitting oral evidence where the written deposition of a witness has been informally recorded.

7. When an instrument on its production appears to have been altered, the party offering it in evidence must explain this appearance if he be called upon to do so by the issue raised, and if the instrument be not admitted by his opponent under notice (Taylor, Ev. § 1819). The Act should contain such a rule, which is in accordance with Indian practice[1].

8. Section 32, cl. (2) might be amended so as to admit, in suits between Indian traders and their correspondents abroad, invoices, account-sales and accounts current as *prima facie* evidence of the facts stated therein[2]. This would often dispense with the necessity of a commission to England to supply formal proof of the amount which exported goods realised at home.

9. To sec. 110, as to the burden of proof of ownership, a clause should be added showing that the rule does not apply when the possession has been obtained by force or fraud.

10. Section 113 should be repealed as *ultra vires*. It might be replaced by a section corresponding with the English rule that there is an irrebuttable presumption that rape cannot be committed by a boy under fourteen. In India perhaps twelve should be the age[3].

11. The subject of rebuttable presumptions is treated by the Act, sec. 114, merely from the point of view of an English lawyer. Illustrations should be added dealing with the presumptions as to the existence of facts peculiar to India, which have been recognised by the Judicial Committee and the Indian High Courts. The following list of such presumptions is not exhaustive[4]:— Presumptions.

a. The presumptions that a Hindú family is joint in food, worship, and estate (12 Moo. I. A. 523; and see 3 ibid. 229: 9 ibid. 66: 10 ibid. 403: 11 Ben. 193); that a family once joint retains its status (11 Moo. I. A. 369); and that the acquisition of property by a member of the family is made by means of the joint estate (14 Moo. I. A. 412: 13 ibid. 333). As to rebutting these presumptions, see 12 Ben. 326, 327 (P. C.): 10 Bom. H. C. 453: but see 11 Moo. I. A. 369: 14 ibid. 412: Marshall, 1: 7 Suth. Civ. R. 451: 8 ibid. 270.

[1] 1 Moore, I. A. 420

[2] 6 Bom. H. C., O. C. I. 39: *Smith* v. *Blakey*, L. R., 2 Q. B. 326.

[3] See a case in Morley's Digest, vol. i. pp. 176, 513, where a Muhammadan boy, only ten years old, was convicted by the *fatwá* of a rape on a girl only three.

[4] For a complete account of the numerous cases on the subject, see Mr. Field's *Law of Evidence in British India*, 4th ed. pp. 562–574.

b. The presumption of partition from separate possession of a portion of the ancestral estate (1 Bom. H. C. 43).

c. The presumption that an endowment made for the worship of an idol is intended to preserve the *shebá* in the donor's family, rather than confer a benefit on an individual (11 Ben. 114). As to rebutting this presumption, see ibid.

d. The presumption in favour of the continuance of an ancient family custom, even though the family have migráted (1 Ben. P. C. 26: 8 Suth. Civ. R. 261). As to rebutting this presumption, see 6 Suth. Civ. R. 295.

e. The presumption that when immovable property is purchased by a Hindú or Muhammadan in the name of his son, it is a *benámi* purchase only, and the property belongs to the father (6 Moo. I. A. 53: 13 Moo. I. A. 232: 6 Bom. 717: 20 Suth. Civ. R. 269). So where a Hindú buys land in the name of his own idol which no one except himself has the power or right to worship, 20 Suth. Civ. R. 95. As to purchases in the name of a wife, see 8 Cal. 545, where the purchaser was a Hindú, and 9 Suth. Civ. R. 338, where the purchaser was a Muhammadan. As to rebutting this presumption, see 13 Moo. I. A. 401: S. C. 5 Ben. 578.

f. The presumption that a tenure is hereditary when it has descended from father to son and the enjoyment has been long and uninterrupted (10 Moo. I. A. 191: 11 ibid. 465: 14 ibid. 247: and see as to zamíndáris, 14 Ben. 139: S. C. L. R. 1 I. A. 282).

g. The presumption that all land is liable to assessment to Government revenue (4 Moo. I. A. 497).

h. The presumption that an adoption was duly made (2 Ben. Appx. 51: 3 Ben. A. C. J. 145; and see 13 Moo. I. A. 85: 14 ibid. 67: 7 Ben. 1, 5: West and B. 1094–1096).

i. The presumption in favour of a Hindú widow's dealings assented to by the persons next in succession when they took place (1 Bouln. 120: 3 Suth. Civ. R. 14, col. 2: West and B. 1217).

Estoppel of agent.

12. Section 117 should be amended so as to provide for the estoppel of an agent, who is not allowed to dispute his principal's title, or to set up the adverse title of a third person, except where the principal was obtained fraudulently or wrongfully from such third person the subject of the agency[1].

13. To sec. 118 should be added a clause providing expressly whether accused persons should or should not be competent witnesses in their own behalf. Where several persons are jointly accused[1] it might be well to declare that any one of them may be called as a

[1] *Hardman* v. *Willcock*, 9 Bing 382 *n.*

witness for or against the co-defendants, except where the charge is so framed as to give him a direct interest in obtaining their acquittal[1].

14. Where facts material to the decision of the cause have come to the notice of the judge, and he is not specially authorised to act on such knowledge[2], it has been held that he must state the facts in open court upon oath, and is liable to cross-examination like any other witness (4 Ben. App. Cr. 15: 20 Suth. Cr. R. 76). But such a practice seems inexpedient where the Judge, as is usual in India, has no colleagues sitting together with him (2 Cal. 405). A section settling the law should be inserted after section 121.

15. A privilege similar to that conferred by section 126 on barristers, attorneys, etc. should be extended to Roman Catholic priests, by whom confession is regarded as a religious duty and concealment of the matter confessed as an obligation of the most sacred kind[3].

16. Act II of 1855 (sec. 22) enacted that a 'witness, being a party to the suit, shall not be bound to produce any document in his possession or power, which is not relevant or material to the case of the party requiring its production.' Some such provision should be added to section 130 of the Evidence Act, which applies only to witnesses who are *not* parties.

17. Section 132 should be amended so as to show, in accordance with 46 Geo. III, cap. 37, and the New York Civil Procedure Code, sec. 837, that a witness may be compelled to answer a relevant question, the reply to which would subject him to a civil suit or pecuniary loss, or charge him with a debt. It might also be desirable to require the judge to make witnesses understand that their answers to criminating questions cannot be used against them except on a charge of giving false evidence. As Mr. Field observes: 'When the usual inducements to speak the truth are weak, the addition of any apprehension as to the consequences of speaking it, further tends to falsehood, which may be prosecuted by removing the cause of such apprehension[4].'

18. The protection afforded by section 132 should be extended to a witness who, either of his own accord or being compelled by the Court, answers a criminating question which is irrelevant, or is relevant only so far as it affects his credit.

[1] 6 Suth. Crim. R. 91, per Glover J., in the belief that he was stating the English law. But now see *R.* v. *Payne*, L. R., 1 C. C. 349, where the Court of Criminal Appeal decided that where two prisoners are tried together, one is *not* a competent witness for the other.

[2] as in cases of interruption to the proceedings, or questions as to the authenticity of a record.

[3] See Livingston's unanswerable argument, *Works*, vol. i. 467–8.

[4] Field, 'On Evidence,' 4th edit. p. 646.

19. The judge should have a discretionary power to forbid leading questions to be put to an adversary's witness who shows a strong interest or bias in favour of the cross-examining party, and needs only an intimation to say whatever is most favourable to his cause. A clause to this effect might be added to section 143.

20. When the witness neither denies nor admits having made a former contradictory statement, but replies that he does not remember, the Act should declare that proof may be given that he in fact make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such statement[1]. A clause to this effect might be added to section 145.

21. A clause should be added to section 162, showing in accordance with a decision of the Bombay High Court[2], that a partner may be compelled, in a suit to which his co-partners are not parties, to produce documents belonging to the firm.

So much for desirable additions to the Act. As to changes in its substance, secs. 5–16 should, as Sir James Stephen himself would admit, be replaced either by his latest definition of relevancy or by Mr. Whitworth's rules above quoted, p. 820. The present illustrations to those sections will, with a few slight changes in arrangement and wording, be appropriate to Mr. Whitworth's rules.

The rules as to giving previous convictions in evidence, as to exempting title-deeds from liability to production, and as to admitting the confession of an accused person against his alleged accomplices, should be amended as above suggested.

Section 57, clause (6) and section 82 should be redrawn so as to avoid, in the former section, the reference to the law of England, in the latter, the reference to the law in force for the time being in England or Ireland.

The verbal amendments suggested in the footnotes should also be made; and the arrangement should be improved so as (*a*) to avoid the numerous forward references[3] which now render it impossible to understand the Act without repeated perusal, and (*b*) to bring together the provisions which deal with the same matter[4].

[1] C. L. Procedure Act, 1854 (sec. 23).

[2] 1 Bom. 496.

[3] Thus in sec. 8, illustrations (*j*) and (*k*) refer to secs. 32 and 157: sec. 21 refers to sec. 32: sec. 33 to sec. 138: sec. 63 to sec. 76: sec. 65 to secs. 66 and 74.

[4] For example, the provisions as to proof of hand-writing in secs. 45, 47, and 73; of character, secs. 54 and 155. The law as to proving evidence given on previous occasions is contained in no less than six sections, viz. 33, 35,

IV. *Indian Peculiarities bearing on Evidence.*

Lastly, in criticising and revising the Evidence Act the following peculiarities of Indian institutions, Indian morals, and Indian practices should be constantly borne in mind :—

Absence of jury.

1. In civil cases, and in most criminal cases, there is no jury, and English rules of evidence founded on the separation of the functions of the judge and the jury are therefore inapplicable to India.

The mufassal pleaders.

2. The practitioners in many of the mufassal Courts cannot yet be relied on to object to improper questions and to the admission of what is not evidence, or to take a note of the ground on which a judge has admitted or rejected evidence. And their ideas as to cross-examination are curiously limited. They have two stock questions. One is directed to elicit that the witness has been previously convicted; the other is an attempt to show that he is at enmity with the party against whom he is produced. Of course, if these questions are answered in the negative they simply recoil on the person asking them.

The Police.

3. The police in India are far more corruptible than they are in England. They are, moreover, inclined to extract confessions by means of torture; and their object being often, not merely to find out the criminal, but to prove criminality against a particular man, they stimulate the culprit to exculpate himself at the expense of an alleged accomplice. In the mufassal they prepare cases for trial; but they have little detective ability: they do not understand what evidence is legally necessary or admissible; and their procedure is to adopt a theory, to support which they mould the evidence, often manufacturing a necessary link when it cannot be otherwise supplied [1].

Native witnesses.

4. Witnesses in India are, as a rule, far less truthful, far less accurate in observation, especially as to time and distance, than the corresponding class of witnesses in England, more timid, more revengeful [2], more apt to conspire to give false evidence, more prone to raise a false defence, even when not guilty. As to their untruthfulness, it will be enough to quote two authorities, one as to the Natives of the North-western frontiers, and the other as to those of Madras. 'As a general rule,' says Mr. Elmslie [3], 'it is rarely possible in this country to accept and act upon uncorroborated direct testimony. A witness may perhaps be believed

76, 80, 153, cl. (3), and 157; and one of these (sec. 35) refers to two other enactments.

[1] C. D. Field in the *Law Quarterly Review*, iv. 209.

[2] On the N.-W. frontier vengeance is deemed a moral duty, especially in the case of a blood-feud, or where a female relative has been dishonoured.

[3] *Notes on Crime and Criminals on the Peshawur Frontier*, Lahore, 1884.

if he is corroborated by some circumstance that cannot lie. If there be no such circumstance, there must always be hesitation in accepting his statement.' Still more strongly did the High Court of Madras express itself in the Rámnád case[1]: 'Oral evidence is *prima facie* not entitled to belief; and in this country where in a civil cause we say that we believe, our meaning can only be that, being compelled to come to a conclusion, it is more reasonable to come to one than to another[2].'

Forgery.

5. Forgery is more or less a trade all over India, and, as above remarked, documents are constantly found to have been forged many years before they were intended to be used as evidence. Even when the forgery is recent the water-mark, if the writing be on paper, and the date of the stamp, if the document be stamped, furnish no sure means of detecting the forgery, for it is a common practice, at least in Bengal and Madras, to buy blank stamped papers, and lay them down for future sale or use as an English wine-merchant lays down a stock of wine. Furthermore, in consequence of the great number of languages and alphabets used throughout British India, the detection of forgery is more difficult than elsewhere.

Drilling witnesses.

6. The practice of drilling witnesses is far more frequent in India than in England.

Retracting confessions.

7. Genuine confessions are frequently retracted by the Natives. 'There is, I think,' says Duthoit J., 'a great difference in this respect between the East and the West. The Oriental has not the same tenacity of purpose that his western brother has, and the latter is, as a rule, no fatalist. In the parts of India with which I am acquainted, a man who has been guilty of culpable homicide, not unfrequently gives in at once. He looks upon himself as an instrument of fate, and says of the victim of his malice or ungovernable rage "his time had come." He is for the moment in despair, and glad to purchase immediate case by making

[1] 2 Mad. H. C. 233.

[2] Nevertheless in dealing with Native testimony the Anglo-Indian Courts must act as if they believed in the doctrine of the Judicial Committee: 'the ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to the Courts may commonly be; that is, due weight must be given to evidence there as elsewhere, and evidence in a particular case must not be rejected from a general distrust of Native testimony, nor perjury widely imputed without some grave grounds to support the imputation. Such a rejection, if sanctioned, would virtually submit the decision of the rights of others to the suspicions, and not to the deliberate judgment of their appointed Judges. Nor must an entire history be thrown aside because the evidence, or some of the evidence, of some of the witnesses is increditable (*sic*) or untrustworthy' (14 Moo. I. A. 354, 355).

a confession. I believe that confessions are more often induced by these motives than they are by torture and bad usage. Speaking from my own experience, I can say that at a single sessions in the Budaon district (a bi-monthly jail-delivery) I have known quite half a dozen instances of undoubtedly genuine confessions retracted. When a man's confession has been made and he is transferred to the Magistrate's lock-up, the petty indulgences which the police allow to a confessing prisoner cease, his mind recovers its balance, his fellow-prisoners (especially in the lock-up of a district with traditions such as those of the district to which I have referred) prove to him how foolish he has been, and the confession is retracted [1].'

Dying declarations.

8. Dying declarations in India are not to be regarded as if they were made in England. 'Very often the murdered man himself before his death implicates every male member of his supposed murderer's family, or of the supposed instigator of the murder, hoping by this means to drink the cup of revenge to its last dregs and to rid his own family of all future annoyance [2].'

Ignorance and helplessness of executants.

9. In England, written documents are seldom executed except by those who can, at any rate, read and write, and are capable of looking after their own interests. In India, bonds are daily executed by men, who are either too ignorant to understand the meaning of a written document, or too poverty-stricken and helpless to contend with a mahájan or sahukár on equal terms.

Mercantile agents.

10. In India the bulk of the internal trade is in the hands of gumáshtas, who are treated as the agents of their employers, and nearly every mercantile transaction is effected through the medium of dalláls. It is, therefore, specially important that the admission of an agent in the matter of his agency should be taken as the admission of his principal [3].

[1] 6 All. 550.

[2] See a paper by Mr. Rattigan, Law Magazine, May 1885, p. 249.

[3] See sec. 18 infra.

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THE INDIAN EVIDENCE ACT, 1872.

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SECRETARIAT LIBRARY.

ACT No. I OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th March, 1872.)

The Indian Evidence Act, 1872.

AS AMENDED BY ACTS XVIII OF 1872 AND III OF 1887.

WHEREAS it is expedient to consolidate, define, and amend the law of Evidence; It is hereby enacted as follows:— Preamble.

PART I.

RELEVANCY OF FACTS.[1]

CHAPTER I.

PRELIMINARY.

1. This Act may be called 'The Indian Evidence Act, 1872': Short title.

It extends to the whole of British India[2], and applies to all Extent.

[1] In this title 'relevancy' seems to mean 'admissibility.' In the heading to Chapter II of this Part 'relevancy' means the having some probative force.

[2] Supra, vol. i. p. 488. It has been expressly declared in force in Upper Burma (Act XX of 1886, sched. II, part I), the Santal Parganas (Reg. III of 1886), the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbum, and the Kolhán in the District of Singbhum and the N.W. Provinces Tarai.

Outside British India it is in force in the Haidarábád Assigned Districts; the civil and military station of Bangalore: the parganas in the Rájputána Agency under British administration (Todgarh, Dewair, Saroth, Chang, and Kotkarana): the cantonments of Sikandarábád, Dísah, and, probably, Baroda: the Madras railway (*Mysore*), the Nágpur and Chhattísgarh state railway (*Khairagarh and Nandgaon*): the Rájputána-Malwa state railway (*Indore, Nabha and Pataudi*),

judicial proceedings in or before any Court, including Courts Martial[1], but not to affidavits[2] presented to any Court or Officer, nor to proceedings before an arbitrator[3];

Commencement of Act.

and it shall come into force on the first day of September, 1872.

Repeal of enactments.

2. On and from that day the following laws shall be repealed:—

(1) All rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India[4].

(2) All such rules, laws, and regulations as have acquired the force of law[5] under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India and not hereby expressly repealed[6].

Interpretation-clause.

3. In this Act the following words and expressions are used

G. I. P. Railway (*Karandwar*): the Bombay states of Akalkot and Játh (the jágír territories), Mysore (probably), the tract of land in Bhawalpur required for the headworks of the Bhawalpur-Lodran canal; and (under the Zanzibar order in council of 1884, sec. 8) Zanzibar.

[1] i. e. Native Courts Martial under Act V of 1869. As to European Courts Martial, see 44 & 45 Vic. c. 58, secs. 127, 128, 163, 164, 165. The Indian Evidence Act, subject to such modifications therein as the Governor General in Council may, by notification in the Gazette of India, direct, shall apply to all proceedings before Indian Marine Courts, Act XIV of 1887, sec. 68.

[2] See the Code of Civil Procedure, secs. 194–197, supra, p. 538.

[3] See the Code of Civil Procedure, secs. 506–526, supra, pp. 660–667. But letters written 'without prejudice,' in the course of negotiation for an amicable adjustment of a claim, are excluded on grounds of public policy, and the rule excluding them is as binding on arbitrators as upon Courts, 4 Cal. 236.

[4] This repeals the English rules of evidence formerly in force, 5 Cal. 754 (S. C., L. R. 7 I. A. 70), for which the Act is assumed to be an adequate substitute. The result is that no one of the numerous points omitted from the Act can be legally supplied by reference to English law of evidence. It would have been better to frame the clause on the model of secs. 2 and 4 of the Penal Code, so that the repeal might only apply to the points dealt with by the Act.

[5] in the Non-regulation Provinces.

[6] See, for instance, the notes on secs. 57 and 76, the Code of Criminal Procedure, secs. 161, 287, 288, 298 (*a*), 339, 342, 467, 473, 475, 533, and the other enactments mentioned supra, pp. 822–827.

in the following senses, unless a contrary intention appears from the context :—

'Court' includes all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence[1]. 'Court.'

'Fact' means and includes— 'Fact.'

(1) any thing, state of things, or relation of things, capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in certain order in a certain place, is a fact.

(*b*) That a man heard or saw something is a fact.

(*c*) That a man said certain words is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation is a fact.

One fact is said to be relevant to another[2] when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts[3]. 'Relevant.'

The expression 'facts in issue' means and includes— 'Facts in issue.'

any fact from which, either by itself or in connexion with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to civil procedure[4], any

[1] For instance, a sub-registrar, as he is legally authorised to take evidence, 13 Ben. Appendix, 40. In sec. 30 'Court' seems also to include a jury, 4 Cal. 493.

[2] The expression 'relevant thereto' occurs in sec. 8: 'relevant to the matters in issue in any suit or any civil or criminal proceeding,' sec. 132: 'relevant to the matter in question,' sec. 32, cl. (8); 'relevant to matters in question,' sec. 145: 'relevant to the suit or proceeding,' secs. 147, 148: 'relevant to the inquiry,' sec. 153. Elsewhere we simply have the word 'relevant' without any mention of the facts to which it is applied.

[3] Secs. 5-55, infra. In his *Digest*, 5th edition, p. 2, Sir J. F. Stephen improves on this as follows: 'The word "relevant" means that any two facts to which it is applied are so related to each other that according to the common course of events one either taken by itself or in connexion with other facts proves or renders probable the past, present, or future existence or non-existence of the other.'

The expression 'irrelevant' occurs in secs. 14, 29, 43, 52, 54, and 165.

[4] Act XIV of 1882, secs. 146-151, supra, pp. 524-527.

Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue[1].

Illustrations.

A is accused of the murder of *B*.
At his trial the following facts may be in issue:—
That *A* caused *B*'s death;
That *A* intended to cause *B*'s death;
That *A* had received grave and sudden provocation from *B*;
That *A*, at the time of doing the act which caused *B*'s death, was, by reason of unsoundness of mind, incapable of knowing its nature.

'Document.' 'Document' means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used[2], for the purpose of recording that matter.

Illustrations.

A writing is a document:
Words printed, lithographed, or photographed are documents:
A map or plan is a document:
An inscription on a metal plate or stone is a document:
A caricature is a document.

'Evidence.' 'Evidence' means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence[3]:

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence[4].

[1] The expression 'facts (or 'fact') in issue' occurs in secs. 5, 6, 7, 8, 9, 11, 17, 21, ill. (*d*), 33, 36, 43: 'questions in issue,' sec. 33: 'matter in issue,' sec. 132.

[2] Compare the Penal Code, sec. 29.

[3] See infra, secs. 59, 60, 91, expl. 3, 119, and 144, expl.

[4] This expression occurs only in the headings to chapters V and VI. The definition of 'evidence' is incomplete. It does not include the statements and admissions of the parties, their conduct and demeanor before the Court, and circumstances coming under the direct cognisance of the Court and having a material bearing on the questions in issue. It does not include the absence of producible witnesses or evidence, as to which see sec. 114, ill. (*g*). It does not, lastly, include the material evidence mentioned or referred to in the Code of Criminal Procedure, secs. 218, 293, and the Code of Civil Procedure, sec. 392. See supra, pp. 142, 167, 624.

As to 'direct evidence,' see sec. 60: 'primary evidence,' secs. 62, 64, 165: 'secondary evidence,' secs. 63, 65, 66.

A fact is said to be proved when, after considering the matters before it[1], the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists[2]. 'Proved.'

A fact is said to be disproved when, after considering the matters before it[1], the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. 'Disproved.'

A fact is said not to be proved when it is neither proved nor disproved[3]. 'Not proved.'

4. Whenever it is provided by this Act that the Court may presume a fact[4], it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it: 'May presume.'

Whenever it is directed by this Act that the Court shall presume a fact[5], it shall regard such fact as proved, unless and until it is disproved: 'Shall presume.'

When one fact is declared by this Act to be conclusive proof of another[6], the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. 'Conclusive proof.'

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue[7] and of such Evidence may be given of

[1] This includes facts orally admitted in court. See 9 Cal. 366, as to the result of a local inquiry by a presiding judicial officer.

[2] The following cognate expressions occur in the Act 'proving,' secs. 68, 104–111: 'to prove,' secs. 22, 50, 101: 'must prove,' sec. 101: 'proof,' secs. 4, 101, 102, 165: 'produced in proof,' sec. 77: 'given in proof,' sec. 91: 'admissible in proof,' sec. 82.

[3] The expression 'disproved' occurs only in secs. 3 and 4: the expression 'not to be proved,' or 'not proved,' does not occur at all.

[4] See secs. 86, 87, 88, 90, 114.

[5] See secs. 79, 80, 81, 82, 83, 84, 85, 89.

[6] See secs. 112, 113. See also secs. 31, 41, 42.

[7] See the definition, sec. 3, supra, p. 851.

facts in issue and relevant facts.

other facts as are hereinafter declared to be relevant, and of no others [1].

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Illustrations.

(*a*) *A* is tried for the murder of *B* by beating him with a club with the intention of causing his death.

At *A*'s trial the following facts are in issue—

A's beating *B* with the club;

A's causing *B*'s death by such beating;

A's intention to cause *B*'s death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure [2].

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction [3], are relevant [4], whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact [5].

(*b*) *A* is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts

[1] '*and of no others.*' This impliedly imposes a duty on the Court to exclude evidence of irrelevant facts, irrespective of objections by the parties. Compare secs. 60, 64, and the last clause of the second proviso to sec. 165. In criminal proceedings this duty is expressly imposed by the Criminal Procedure Code, sec. 298. In civil proceedings see the Code of Civil Procedure, sec. 140, para. 2.

[2] Secs. 59–63, 138, 139.

[3] This word, which re-occurs in secs. 13, cl. (*a*), and 32, cl. 7 ('transacted,' sec. 9), is not defined in the Act. In his *Digest of the Law of Evidence*, p. 4, Sir J. F. Stephen defines it as 'a group of facts so connected together as to be referred to by a single legal name, as a crime, a contract, a wrong, *or any other subject of inquiry which may be in issue*'—a curious definition.

[4] i.e. have a certain amount of probative force.

[5] for every part of a transaction is connected with every other part as cause, or effect, or as effects of one cause, Whitworth, p. 13.

is relevant, as forming part of the general transaction, though *A* may not have been present at all of them [1].

(*c*) *A* sues *B* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself [2].

(*d*) The question is, whether certain goods ordered by *B* were delivered to *A*. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact [3].

Facts which are occasion, cause, or effect of facts in issue.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether *A* robbed *B*.

The facts that, shortly before the robbery, *B* went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant [4].

(*b*) The question is, whether *A* murdered *B*.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts [5].

(*c*) The question is, whether *A* poisoned *B*.

The state of *B*'s health before the symptoms ascribed to poison, and habits of *B*, known to *A*, which afforded an opportunity for the administration of poison, are revelant facts [6].

[1] That war was waged is one of the facts in issue. These occurrences are part of that fact.

[2] Parts of the correspondence which do not contain the libel may be causes or effects of the publication, or effects of *B*'s good faith or malice, or effects of the words having been used in a particular sense, or effects of a relationship between the parties showing that the occasion was or was not privileged, Whitworth, p. 14.

[3] Each delivery is a relevant fact as being part of the fact in issue: Did the goods pass from *B* to *A*?

[4] The fact that shortly before the robbery *B* had money in his possession is relevant as a fact implied by the fact in issue. That *B* let other persons know that he had the money is relevant as a cause of the fact in issue, Whitworth, p. 14.

[5] Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts as effects of parts of the fact in issue.

[6] That *B* was ill before the symptoms ascribed to poison is relevant as denying the connexion of cause and effect between the fact in issue (the poisoning) and the relevant fact (the death). That *B* was well is relevant as asserting this connexion. Habits of *B* known to *A* which afforded an opportunity for administering poison are, if it is alleged that the opportunity was availed of, relevant as part of the fact in issue. If the opportunity was not availed of, the habits are not relevant, Whitworth, p. 14.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows and constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct[1] of any party[2], or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct[1] of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced[3] by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation I.—The word 'conduct' in this section does not include statements[4], unless those statements accompany and explain acts other than statements[5]; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation II.—When the conduct of any person is relevant, any statement made to him or in his presence and[6] hearing, which affects such conduct, is relevant[7].

[1] whether contemporaneous or not.

[2] This includes not only the plaintiff and defendant in a civil suit, but parties in a criminal prosecution, as, for instance, a prisoner charged with murder, 7 All. 399.

[3] i. e. directly and immediately influenced. Acts resulting from some intermediate cause, such as questions or suggestions by other persons, are not 'conduct' made relevant by this section, 7 All. 385.

[4] As to statements, see infra, secs. 32–39.

[5] Those statements are admissible, and those only, 'which are the essential complement of acts done or refused to be done, so that the act itself, or the omission to act, acquires a special significance as a ground for inference with respect to the issues in the case under trial, 3 Bom. 17, per West J. Explanation 1 points to a case in which a person whose conduct is in dispute, mixes up together actions and statements; and in such a case those actions and statements may be proved as a whole. For instance, a wounded person is seen running down a street and calling out his assailant's name and the circumstances under which the injuries were inflicted. Here what he says and what he does may be taken together and proved as a whole. But the case would be very different if some passer-by stopped him and suggested some name or asked some question regarding the transaction. If a person were found making such statements without any question first being asked, then they might be regarded as part of his conduct. But when the statement is made merely in response to some question or suggestion, it shows a state of things introduced, not by the fact in issue, but by the interposition of something else, 7 All. 396, where it was accordingly held that, in a trial for murder, signs made by the deceased in reply to questions as to the circumstances under which she had been injured, could not be admitted under this section as 'conduct.'

[6] 'and,' not 'or.' In England see *Neile* v. *Jakle*, 2 C. & K. 709.

[7] *R.* v. *Edmunds*, 6 C. & P. 164. English lawyers say declarations which

Illustrations.

(*a*) *A* is tried for the murder of *B*.

The facts that *A* murdered *C*, that *B* knew that *A* had murdered *C*, and that *B* had tried to extort money from *A* by threatening to make his knowledge public, are relevant[1].

(*b*) *A* sues *B* upon a bond for the payment of money. *B* denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, *B* required money for a particular purpose, is relevant[2].

(*c*) *A* is tried for the murder of *B* by poison.

The fact that, before the death of *B*, *A* procured poison similar to that which was administered to *B*, is relevant[3].

(*d*) The question is, whether a certain document is the will of *A*.

The facts that, not long before the date of the alleged will, *A* made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakíls in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant[4].

(*e*) *A* is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, *A* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant[5].

(*f*) The question is, whether *A* robbed *B*.

The facts that, after *B* was robbed, *C* said in *A*'s presence, 'the police are coming to look for the man who robbed *B*,' and that immediately afterwards *A* ran away, are relevant[6].

(*g*) The question is, whether *A* owes *B* rupees 10,000.

The facts that *A* asked *C* to lend him money, and that *D* said to *C* in *A*'s presence and hearing, 'I advise you not to trust *A*, for he owes *B* 10,000 rupees,' and that *A* went away without making any answer, are relevant facts[7].

are part of the *res gestae* may be proved.

[1] as causes of the fact in issue.

[2] as a cause of the fact in issue.

[3] as an effect of a cause of the fact in issue.

[4] as effects of the cause of the fact in issue.

[5] for they are all effects of the immediate cause (namely, *A*'s resolution to commit the offence) of the fact in issue, Whitworth p. 15.

[6] the latter as an effect of the fact in issue, and the former as a cause of the latter. (See infra, ill. *j*.)

[7] for *A*'s going away without making any answer is an effect of the fact in issue, and the other two facts are causes of that effect. So where the question was whether *A* had voluntarily caused hurt to *B*, the facts that *B* had in *A*'s presence and hearing stated to *C*, immediately after the offence, that *A* had committed it and that *A* did not deny the commission, are relevant, 10 Cal. 302.

(*h*) The question is, whether *A* committed a crime.

The fact that *A* absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant[1].

(*i*) *A* is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant[2].

(*j*) The question is, whether *A* was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant[3].

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant[4]

as a dying declaration under section 32, clause (1),

or as corroborative evidence under section 157.

(*k*) The question is, whether *A* was robbed.

The fact that soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant[5].

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant[6]

as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157[7].

Facts necessary to explain or introduce relevant facts.

9. Facts necessary[8] to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

[1] The absconding is relevant as an effect of the fact in issue: the contents of the letter as a cause of that effect.

[2] as effects of a fact in issue.

[3] as effects of the fact in issue.

[4] i.e. admissible. The Act contains no definition of 'admissible,' and 'admissibility,' though 'admissible' occurs in sec. 163, 'admissible in proof' sec. 82, and 'admissibility,' sec. 162.

[5] as effects of the fact in issue. See 10 Ben. Appx. 2.

[6] i.e. admissible.

[7] See as to illustrations (*j*) and (*k*) Taylor § 581. Illustr. (*j*) admits the terms of the complaint, and thus lets in the name of the man.

[8] The Act gives no test of the necessity. But see infra, sec. 136.

Illustrations.

(*a*) The question is, whether a given document is the will of *A*.

The state of *A*'s property and of his family at the date of the alleged will may be relevant facts [1].

(*b*) *A* sues *B* for a libel imputing disgraceful conduct to *A*; *B* affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue [2].

The particulars of a dispute between *A* and *B* about a matter unconnected with the alleged libel are irrelevant [3], though the fact that there was a dispute may be relevant if it affected the relations [4] between *A* and *B*.

(*c*) *A* is accused of a crime.

The fact that, soon after the commission of the crime, *A* absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue [5].

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly [6].

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent [7].

(*d*) *A* sues *B* for inducing *C* to break a contract of service made by him with *A*. *C*, on leaving *A*'s service, says to *A*—'I am leaving you because *B* has made me a better offer.' This statement is a relevant fact as explanatory of *C*'s conduct, which is relevant as a fact in issue [8].

(*e*) *A*, accused of theft, is seen to give the stolen property to *B*, who is seen to give it to *A*'s wife. *B* says, as he delivers it—'*A* says you are to hide this.' *B*'s statement is relevant as explanatory of a fact which is part of the transaction [9].

[1] Rather: 'So much of the state of *A*'s property or of his family as shows probable cause for his making the alleged will, or as shows the absence of such cause, is relevant' (Whitworth, pp. 7, 17).

[2] Rather: So much of the position and relations of the parties at the time when the libel was published as shows cause for *B*'s publishing a true libel or a false one, or the absence of such causes, and so much as bears upon the matter asserted in the libel as cause of its truth or otherwise, are relevant.

[3] because they do not make any fact in issue more or less likely to have happened.

[4] Rather: any part of the position and relations.

[5] It is relevant as an effect of the fact in issue.

[6] It is relevant as denying the connection of cause and effect between the fact in issue and the alleged relevant fact.

[7] Further than that, they do not make the fact in issue more or less likely to have happened.

[8] The statement is relevant as affirming the connexion of cause and effect between the fact in issue (*B*'s persuasion) and the relevant fact (*C*'s leaving *A*'s service).

[9] It is relevant as an effect of a fact in issue.

(*f*) *A* is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction [1].

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done, or written [2] by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it [3].

Illustration.

Reasonable ground exists for believing that *A* has joined in a conspiracy to wage war against the Queen.

The facts that *B* procured arms in Europe for the purpose of the conspiracy, *C* collected money in Calcutta for a like object, *D* persuaded persons to join the conspiracy in Bombay, *E* published writings advocating the object in view at Agra, and *F* transmitted from Delhi to *G* at Cabul the money which *C* had collected at Calcutta, and the contents of a letter written by *H* giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove *A*'s complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he had left it [4].

When facts not relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connexion with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable [5].

[1] That the riot occurred is a fact in issue, and the cries of the mob are relevant as parts or as effects of the fact: see Lord George Gordon's case, 21 Howell's S. T. 514, 529.

[2] This admits a letter not written in furtherance of the conspiracy. Secus in England.

[3] *R.* v. *Amiruddin*, 7 Ben. 63; *R.* v. *Amir Khan*, 9 Ben. 36.

[4] And any of these facts that are so connected with the other fact in issue, *A*'s complicity, as to make it more or less likely, are relevant for that purpose also. Cf. in England, *R.* v. *Hardy*, 24 Howell's S. T. 451-3.

[5] An adjudication or opinion expressed in a judgment, is not, properly speaking, 'a fact,' and certainly not a fact within the meaning of sec. 11, 6 Cal. 171, 188, per Garth C. J. This section must be read with, and its over-extensive terms must be limited by, sec. 54 and the illustra-

Illustrations.

(*a*) The question is, whether *A* committed a crime at Calcutta on a certain day.

The fact that, on that day, *A* was at Lahore is relevant[1].

The fact that, near the time when the crime was committed, *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant[2].

(*b*) The question is, whether *A* committed a crime.

The circumstances are such that the crime must have been committed either by *A*, *B*, *C*, or *D*. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either *B*, *C*, or *D*, is relevant[3].

Relevant facts in suits for damages.

12. In suits in which damages are claimed, any fact[4] which will enable the Court to determine the amount of damages which ought to be awarded is relevant[5].

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right[6] or custom[7], the following facts are relevant—

(*a*) Any transaction[8] by which the right or custom in

tions to sec. 14: see 11 Bom. H.C. 90, per West J., whose judgment is reprinted in the *Law Journal* for May 27, 1876, pp. 324-326.

[1] as denying a part of the fact in issue.

[2] as making a part of the fact in issue unlikely.

[3] That the crime was committed is adduced as an effect of the fact in issue that *A* committed it. To show that some other person committed it is relevant as denying the connexion of cause and effect between the fact in issue and relevant fact; and to show that no other person committed it, is relevant as affirming that connexion, Whitworth, p. 18.

[4] see as to character, sec. 55.

[5] for the amount is a fact in issue, and any fact which will enable the Court to determine it is connected with the fact in issue as a cause or an effect or having a common cause.

[6] This probably means only a public or private incorporeal right, such as a right of fishery, 6 Cal. 186, 23 Suth. Civ. R. 311, though it has been held to include the proceedings in suits to establish a right to certain lands, 22 Suth. Civ. R. 365. And the Bombay High Court has ruled that judgments and decrees recognising rights between parties to a suit or between persons whom they represent, even if the parties to the former suit be strangers, are admissible under this section, 3 Bom. 3, following the decision of Couch C.J. in 22 Suth. W. R. 365. But, according to Garth C.J., 6 Cal. 186, the decision of a Court is not a 'transaction,' and in the Bombay case, the former decisions were admissible under sec. 40. See as to 'right' and 'transaction,' 10 Bom. 442.

[7] As to evidence of mercantile usage see 7 Moo. I. A. 263, 282. As to family usage (*kulachar*), 6 Ben. 238, 242: 12 Ben. 396, where the P. C. said that it must be ancient and certain. See also 1 Ben. Short Notes, ix: 20 Suth. Civ. R. 157: 13 Ben. 165: Suth. 1864, p. 20: 3 Mad. H. C. 77. As to discontinuance of such usage, see 12 Moo. I. A. 81 and 1 Cal. 195.

[8] Accordingly, when a set of plaintiffs come into Court claiming a right

question was created, claimed, modified, recognised, asserted, or denied, or which was inconsistent with its existence:

(*b*) Particular instances in which the right or custom was claimed, recognised, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether *A* has a right to a fishery. A deed conferring the fishery on *A*'s ancestors, a mortgage of the fishery by *A*'s father, a subsequent grant of the fishery by *A*'s father irreconcileable with the mortgage, particular instances in which *A*'s father exercised the right, or in which the exercise of the right was stopped by *A*'s neighbours, are relevant facts[1].

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant[2].

by custom as against a defendant, a declaration by them *among themselves* (but behind the back of the defendant) that they have the right, and a covenant contrary to it, are admissible as evidence on their behalf, 10 Ben. 265, per Macpherson J. See also 20 Suth. Civ. R. 345: 23 ibid. 162: 24 ibid. 265, 284, 431.

[1] The deed is relevant as a cause of this fact in issue. The mortgage is relevant as an effect of the father's right, which is relevant as a cause of *A*'s right. The subsequent grant is relevant as denying a fact implied by that relevant fact. The particular instances are relevant facts as effects of the father's right. The instances in which the exercise of the right was stopt are relevant as contradicting those relevant facts.

[2] This applies to the class of cases discussed in Taylor *on Evidence*, 8th ed. §§ 342–346, that is to say, cases when a particular act is more or less criminal or culpable, according to the state of mind or feeling of the person who does it. For instance, in actions of slander, or false imprisonment or malicious prosecution, where malice is one of the main ingredients in the wrong which is charged, evidence is admissible to show that the defendant was actuated by spite or enmity against the plaintiff: or again, on a charge of uttering counterfeit coin, evidence is admissible to show that the prisoners knew the coin to be counterfeit, because he had other similar coin in his possession, or had passed such coin before or after the particular occasion which formed the subject of the charge. But the section does not extend to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. We have no right to prove that a man committed theft or any other crime by showing that he committed similar crimes on other occasions, 6 Cal. 660, per Garth C.J.

The words 'or habit' should apparently be inserted after 'state of mind.' In illustration (*a*) the fact that *A* was, at the same time, in possession of many other stolen articles is relevant as proving a habit which

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a*) *A* is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen [1].

(*b*) *A* is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, *A* was possessed of a number of other pieces of counterfeit coin, is relevant [2].

(*c*) *A* sues *B* for damage done by a dog of *B*'s, which *B* knew to be ferocious.

The facts that the dog had previously bitten *X*, *Y*, and *Z*, and that they had made complaints to *B*, are relevant [3].

(*d*) The question is, whether *A*, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that *A* had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that *A* knew that the payee was a fictitious person [4].

(*e*) *A* is accused of defaming *B* by publishing an imputation intended to harm the reputation of *B*.

The fact of previous publications by *A* respecting *B*, showing ill-

makes the receiving with guilty knowledge more likely than it would be without proof of the habit. (Whitworth, p. 8.)

[1] The fact that, at the same time, *A* was in possession of many stolen articles is relevant as an effect of a habit of receiving stolen goods, which habit is relevant as a cause of his receiving the particular article with a knowledge that it was stolen, Whitworth, p. 19. But see 11 Bom. H. C. 90.

[2] The fact that, at the time of its delivery, *A* was possessed of a number of other pieces of counterfeit coin is relevant as effects of a habit, which habit is relevant as a cause of his delivering the particular piece with a knowledge that it was counterfeit, Whitworth, p. 19. See sec. 15, ill. (*c*) infra, and *Reg.* v. *Foster*, 24 L. J. M. C. 134.

[3] as the causes of a fact in issue, i.e. *B*'s knowledge that the dog was ferocious. See *Thomas* v. *Morgan*, 2 C. M. & R. 496.

[4] *A*'s knowledge on the previous occasions is a cause of his knowledge on the occasion in question: that there was not time for the previous bills to be transmitted to him by the payee if the payee had been a real person is a cause of *A*'s knowledge on previous occasions; and the fact that *A* accepted the bills is an affirmation of the connexion of cause and effect between the fact concerning time and the fact of *A*'s knowledge. See *Gibson* v. *Hunter*, 2 H. Bl. 288.

will on the part of *A* towards *B*, is relevant, as proving *A*'s intention to harm *B*'s reputation by the particular publication in question [1].

The facts that there was no previous quarrel beetween *A* and *B*, and that *A* repeated the matter complained of as he heard it, are relevant, as showing that *A* did not intend to harm the reputation of *B* [2].

(*f*) *A* is sued by *B* for fraudulently representing to *B* that *C* was solvent, whereby *B*, being induced to trust *C*, who was insolvent, suffered loss.

The fact that, at the time when *A* represented *C* to be solvent, *C* was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that *A* made the representation in good faith [3].

(*g*) *A* is sued by *B* for the price of work done by *B*, upon a house of which *B* is owner, by the order of *C*, a contractor.

A's defence is that *B*'s contract was with *C*.

The fact that *A* paid *C* for the work in question is relevant, as proving that *A* did, in good faith, make over to *C* the management of the work in question, so that *C* was in a position to contract with *B* on *C*'s own account, and not as agent for *A* [4].

(*h*) *A* is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where *A* was, is relevant, as showing that *A* did not in good faith believe that the real owner of the property could not be found [5].

[1] *Long* v. *Barrett*, 7 Ir. Law Rep. 439 : *Barrett* v. *Long*, 8 *ibid.* 331.

[2] The fact of previous publications by *A* respecting *B* showing ill-will on the part of *A* towards *B* is relevant as an effect of the same cause as that of which the fact in issue is an effect.

The fact that there was no previous quarrel between *A* and *B* is relevant as alleging absence of fact in issue. The fact that *A* repeated the matter as he heard it is relevant as denying the connexion of cause and effect between the two facts, the malicious intention and the publication, Whitworth, p. 20.

[3] *A*'s good faith is in issue, i. e. Did *A*, when he represented *C* as solvent, think him solvent? is an issue. As *C*'s insolvency may be put forward on one side as a cause of *A*'s thinking him not solvent, so the fact that his neighbours and persons dealing with him supposed him to be solvent may be put forward as effects of causes which are causes also of *A*'s thinking him solvent Thus the suppositions are effects of causes of a fact in issue, Whitworth, p. 20. See *Sheen* v. *Bumpstead*, 1 Hurlst. & C. 358.

[4] The fact that *A* paid *C* for the work in question is relevant. For it is in issue, Was *B*'s contract with *A*? Therefore that *A* contracted for the same piece of work with *C* is relevant, as showing absence of cause to contract with *B*, and that *A* paid *C* is relevant as an effect of the relevant fact that he contracted with *C*. See *Gerish* v. *Chartier*, 1 Com. B. 13.

[5] It is relevant as a cause of *A*'s knowledge that the real owner could be found.

The fact that *A* knew, or had reason to believe, that the notice was given fraudulently by *C*, who had heard of the loss of the property and wishing to set up a false claim to it, is relevant, as showing that the fact that *A* knew of the notice did not disprove *A*'s good faith [1].

(*i*) *A* is charged with shooting at *B* with intent to kill him. In order to show *A*'s intent, the fact of *A*'s having previously shot at *B* may be proved [2].

(*j*) *A* is charged with sending threatening letters to *B*. Threatening letters previously sent by *A* to *B* may be proved, as showing the intention of the letters [3].

(*k*) The question is, whether *A* has been guilty of cruelty towards *B*, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts [4].

(*l*) The question is, whether *A*'s death was caused by poison.

Statements made by *A* during his illness as to his symptoms, are relevant facts [5].

(*m*) The question is, what was the state of *A*'s health at the time when an assurance on his life was affected.

Statements made by *A* as to the state of his health at or near the time in question, are relevant facts [6].

(*n*) *A* sues *B* for negligence in providing him with a carriage for hire not reasonably fit for use, whereby *A* was injured.

The fact that *B*'s attention was drawn on other occasions to the defect of that particular carriage, is relevant [7].

The fact that *B* was habitually negligent about the carriages which he let on hire, is irrelevant [8].

(*o*) *A* is tried for the murder of *B* by intentionally shooting him dead.

The fact that *A*, on other occasions, shot at *B* is relevant, as showing his intention to shoot *B* [9].

[1] It is relevant as showing that the alleged cause of the fact in issue had not the effect of causing the fact in issue, Whitworth, pp. 20, 21.

[2] The fact of *A*'s having previously shot at *B* is relevant; for *A*'s intention is a fact in issue. The fact is one which may continue through a space of time, and the previous shooting is an effect of it, Whitworth, p. 21: see *R.* v. *Voke*, R. & R. 531.

[3] Threatening letters previously sent by *A* to *B* are relevant, for the intention to cause fear is a fact in issue. It is a fact capable of prolonged existence, and the previous letters may be effects of it, Whitworth p. 21. See *Robinson's case*, 2 East, P. C. 1110, 1112.

[4] They are relevant as effects of the cause of the fact in issue, or as showing absence of cause of the fact in issue.

[5] They are relevant as effects of the fact in issue.

[6] *Aveson* v. *Lord Kinnaird*, 6 East, 188. They are relevant as effects of the fact in issue.

[7] as a cause of *B*'s knowledge, which is a fact in issue.

[8] apparently because it is not connected with the fact in issue. But see note on sec. 14, ill. (*a*).

[9] in other words, as an effect of a fact in issue, *A*'s intention.

The fact that *A* was in the habit of shooting at people with intent to murder them, is irrelevant[1].

(*p*) *A* is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant[2].

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant[3].

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) *A* is accused of burning down his house in order to obtain money for which it is insured.

The facts that *A* lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental[4].

(*b*) *A* is employed to receive money from the debtors of *B*. It is *A*'s duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The fact that other entries made by *A* in the same book are false, and that the false entry is in each case in favour of *A*, are relevant[5].

(*c*) *A* is accused of fraudulently delivering to *B* a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after[6] the delivery to *B*, *A* delivered counterfeit rupees to *C*, *D*, and *E* are relevant as showing that the delivery to *B* was not accidental[7].

[1] because he has in each case a definite intention of killing the particular person shot at, and there is no ulterior common object to connect together the fact of the previous shooting and the fact in issue, Whitworth, p. 22.

[2] as an effect of the cause of his committing the crime.

[3] as it is not connected with the fact in issue, namely, whether he committed the particular crime.

[4] They are relevant as effects of the cause of the fact in issue: see *R.* v. *Gray*, 4 F. & F. 1102; but see the remarks on this case in Stephen's *Digest*, p. 19 *n*.

[5] as effects of the cause of *A*'s making the particular false entry intentionally: see *R.* v. *Richardson*, 2 F. & F. 343.

[6] If the delivery to *C*, *D* and *E* took place (say) a year before or a year after the delivery to *B*, it would not be evidence.

[7] They are relevant as effects of the cause of the intentional delivery of the rupee in question. See Taylor, § 322.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(*a*) The question is, whether a particular letter was despatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant [1].

(*b*) The question is, whether a particular letter reached *A*. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant [2].

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned [3].

Admission defined.

18. Statements made by a party to the proceeding, or by an agent [4] to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them [5], are admissions.

Admission by party to proceeding or his agent;

Statements made by parties to suits, suing or sued in a representative character [6], are not admissions, unless they were made while the party making them held that character.

by suitor in representative character;

Statements made by—

[1] as causes of the fact in issue. See *Hetherington* v. *Kemp*, 4 Campb. 193.

[2] The first as a cause of the fact in issue, and the second as affirming the connexion of cause and effect between the first and the fact in issue. See *Warren* v. *Warren*, 1 C. M. & R. 250.

[3] 5 Cal. 864. The provisions of secs. 17–22 apply to criminal as well as to civil cases.

[4] For the reasons stated supra, p. 841, it is particularly important in India that the admission of an agent in the matter of his agency should be taken as the admission of his principal. For the purpose of making admissions with reference to a joint concern or common subject of interest, one partner or co-contractor is considered to be the agent of the others, 11 Cal. 588, 591.

[5] Thus a party is bound by an admission of fact made by his vakíl, 2 Moo. I. A. 253. But the guardian of a minor cannot bind his ward by admissions of previous transactions, 10 C. L. R., cited by Field, 118; and of course an admission by one of several defendants in a suit is no evidence against another defendant, L. R., 2 I. A. 129.

[6] e. g. an executor, an administrator, or the assignee of an insolvent.

by party interested in subject-matter;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest[1] in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest[2] of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability[3].

Illustration.

A undertakes to collect rents for *B*.

B sues *A* for not collecting rent due from *C* to *B*.

A denies that rent was due from *C* to *B*.

A statement by *C* that he owed *B* rent is an admission, and is a relevant fact as against *A*, if *A* denies that *C* did owe rent to *B*.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions[4].

Illustration.

The question is, whether a horse sold by *A* to *B* is sound.

A says to *B*—'Go and ask *C*, *C* knows all about it.' *C*'s statement is an admission.

Proof of admissions against persons

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest[5]; but they cannot be proved by or on behalf of the person who

[1] That an auction-purchaser at a sale for arrears of revenue does not 'derive' any interest from the defaulter, see 8 Suth. Civ. R. 222.

[2] in the subject-matter of the suit. See *Fenwick* v. *Thornton*, M. & M. 51, and *Pocock* v. *Billing*, 2 Bing. 269. The admission of a partner made after the dissolution of the partnership, in regard to the business of the firm previously transacted, would be admissible against all the partners, *Pritchard* v. *Draper*, 1 Russ. & M. 191, 199, 200.

[3] See Taylor, § 759.

[4] Taylor, §§ 760–764, and see sec. 31 infra.

[5] e.g. the purchaser of property at an execution-sale, 21 Suth. Civ. R. 148: see 2 Ben. P.C. 78: L. R., 8 I. A. 75: 9 Cal. 265: 6 Bom. 490.

makes them or by his representative in interest, except in the following cases :—

making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body[1], relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission[2].

Illustrations.

(*a*) The question between *A* and *B* is, whether a certain deed is or is not forged. *A* affirms that it is genuine, *B* that it is forged.

A may prove a statement by *B* that the deed is genuine, and *B* may prove a statement by *A* that the deed is forged; but *A* cannot prove a statement by himself that the deed is genuine, nor can *B* prove a statement by himself that the deed is forged.

(*b*) *A*, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. *A* may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) *A* is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if *A* were dead, it would be admissible under section 32, clause 2.

(*d*) *A* is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) *A* is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

[1] Sec. 14 supra. [2] See sec. 6 supra.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions[1] as to the contents of a document are not relevant[2], unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained[3], or unless the genuineness of a document produced is in question[4].

Admissions in civil cases, when relevant.

23. In civil cases no admission is relevant[2], if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakíl from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant[5] in a criminal proceeding, if the making of the confession appears to the Court[6] to have been caused by an inducement, threat[7], or promise, having reference to the charge against the accused person[8], proceeding from a person in authority[9] and sufficient, in the opinion of the Court, to give the accused

[1] Secus as to written admissions; such as recitals in another document or pleadings in court, which, in the case of a disputed document, are often the best evidence of its genuineness.

[2] i. e. admissible.

[3] See sec. 65.

[4] This section, agreeing with the decision in L. R., 10 I. A. 79, designedly departs from the rule in *Slatterie* v. *Pooley*, 6 M. & W. 669.

[5] i. e. inadmissible.

[6] 9 Bom. H. C. 367: 11 *ibid.* 138.

[7] 10 Ben. Appx. I.

[8] See, e. g. *R.* v. *Sexton*, 3 Russ. C. & M. 5th ed. 445: *R.* v. *Green*, 6 C. & P. 655.

[9] 9 Bom. H. C. 358, where held that a travelling auditor of a railway company was 'a person in authority' as regards one of its booking clerks. The test would seem to be, had the person authority to interfere with the matter; and any concern or interest in it would appear to be held sufficient to give him that authority, *ibid.* 369, and see 10 Bom. 232. But the members of a panchâyat sitting to consider whether two persons should be excommunicated for having committed a murder are not 'in authority' within the meaning of this Act, 4 All. 46.

person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature[1] in reference to the proceedings against him[2].

25. No confession[3] made[4] to a police officer[5], shall be proved as against a person accused of any offence[6]. Confession to police.

26. No confession[7] made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person[8]. Confession while in custody of police.

27. Provided that, when any fact is deposed to[9] as discovered in consequence of information[10] received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not[11], as relates distinctly to the fact thereby discovered, may be proved[12]. How much information received from accused may be proved.

[1] *R.* v. *Gilham*, M. C. C. 186: *R.* v. *Wild*, ibid. 452.

[2] As to this section and secs. 25, 26, see 3 Bom. 17. A confession does not become 'irrelevant' merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written exactly in the form prescribed: 3 All. 338.

[3] 'Confession' here does not include 'admission,' 6 Cal. 530, following 10 Bom. Appx. 2.

[4] by an accused person, 9 Bom. 134.

[5] A Village Magistrate (in the Madras Presidency) is not a 'police officer,' 7 Mad. 287. But the Commissioner and Deputy Commissioner of police are 'police officers' as much as the more ordinary members of the force, 1 Cal. 216

[6] This, of course, does not preclude the counsel for one accused person from asking, on behalf of his client, questions to prove a confession made by another accused person, 2 Bom. 64. Section 25 is not qualified by section 261, 1 Cal. 215.

[7] This includes any admission of a criminating circumstance, though made in the course of a self-exculpatory statement, and not as a confession, 6 Bom. 34.

[8] This means that a confession made by a prisoner in custody to any person other than a police-officer, is admissible, if made in the presence of a magistrate. The object is to exclude confessions obtained through undue influence, 1 Cal. 215.

[9] by any one.

[10] not 'act,' 10 Bom. 595, following 4 All. 198 and 6 All. 509.

[11] The words 'whether it amounts to a confession or not' are to be read as qualifying the word 'information' in the immediately preceding context, not the words 'so much.'

[12] 10 Bom. 595. This section is a proviso, not only to sec. 26, but also to sec. 25, 6 All. 509 (Mahmúd J. dissenting). The object of secs. 25 and 26 is 'to deter the police from extorting confessions by rendering such confessions absolutely inadmissible in proof, unless made in the immediate presence of a magistrate.' 'The pro-

Confession made after removal of impression caused by inducement.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant[1].

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy[2], or in consequence of a deception practised on the accused person for the purpose of obtaining it[3], or when he was drunk[4], or because it was made in answer to questions which he need not have answered[5], whatever may have been the form of those questions, or because he was not warned[6] that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried[7] jointly for the same offence[8], and a confession[9] made by one of such persons affecting himself and some other of such persons is proved[10], the Court[11] may take into consideration[12] such confession as against such other person as well as against the person who makes such confession[13].

hibition contained in these sections should be strictly applied, and any relaxation of it in accordance with the proviso in sec. 27 should be sparingly admitted, and only to the extent of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it, 4 All. 204. And see 6 All. 509, per Straight J.; 11 Cal. 641, per Norris J., and Tayl. § 902, from the last sentence of which sec. 27 is derived.

[1] i. e. admissible.

[2] *R.* v. *Shaw*, 6 C. & P. 372.

[3] *R.* v. *Derrington*, 2 C. & P. 418, and see 20 Suth. Cr. R. 33.

[4] *R.* v. *Spilsbury*, 7 C. & P. 187.

[5] 7 Suth. Cr. R. 56: and see *R.* v. *Simons*, 6 C. & P. 540, where Alderson B. said that what a person was overheard saying to his wife, or even saying to himself, is evidence.

[6] 1 Ben. O. Cr. 15.

[7] Confessions made by some of several co-prisoners charged but not tried are not admissible against the others, 7 Mad. 102.

[8] 5 Bom. 63. Murder and abetment of murder are not the same offence, 7 Mad. 580.

[9] This means an admission of guilt, not a mere self-inculpatory statement, falling short of such admission, 7 All. 648. Still less can it mean a self-exculpatory statement, 6 Cal. 279.

[10] Thus when the judge examines each of two accused persons in the absence of the other, the examination of each can be used only as against himself, unless it 'proved' as against the person to whose prejudice it is to be used, 6 Bom. 124, and see 7 Cal. 65.

[11] In a trial by a judge with a jury this includes both the judge and the jury, 4 Cal. 483.

[12] 24 Suth. Cr. R. 42.

[13] The test which this section intends to be 'applied to a statement of one prisoner proposed to be used in evidence as against another, is to see whether it is sufficient by itself to justify the conviction of the person

Illustrations.

(*a*) *A* and *B* are jointly tried for the murder of *C*. It is proved that *A* said,—'*B* and I murdered *C*.' The Court may consider the effect of this confession as against *B*.

(*b*) *A* is on his trial for the murder of *C*. There is evidence to show that *C* was murdered by *A* and *B*, and that *B* said,—'*A* and I murdered *C*.'

This statement may not be taken into consideration by the Court against *A*, as *B* is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained [1]. Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal [2], of relevant facts made by a person who is dead [3], or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:— Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the When it relates to cause of death;

making it, *of the offence* for which he is being jointly tried with the other person or persons against whom it is tendered. In fact, to use a popular and well-understood phrase, the confessing prisoner must tar himself and the person or persons he implicates with one and the same brush,' 2 All. 446. The confession must implicate the confessing person substantially to the same extent as it implicates the person against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. This implication of himself by the confessing person is intended by the Legislature to take the place as it were of the sanction of an oath, or rather is supposed to serve as some guarantee for the truth of the accusation against the other, 10 Ben. 458, per Phear J. As to the necessity of corroborating a confession made by one of several persons tried jointly for the same offence, 1 All. 664, 675. That the confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others, see 11 Bom. H. C. 196: 1 Bom. 475: and see 4 Cal. 483: 1 Mad. 163: 2 All. 387.

[1] Sec. 115, and see Tayl. § 817.

[2] But the statements referred to in clauses (6) and (7) can only be written.

[3] As to the burthen of proving the death, see sec. 104 infra.

transaction which resulted in his death, in cases in which the cause of that person's death comes into question[1].

Such statements are relevant[2] whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2) When the statement was made by such person in the ordinary course of business[3], and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him[4], or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3) When the statement is against the pecuniary or proprietary interest of the person making it[5], or when, if true, it would expose him[6] or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship the person making the statement

[1] In a trial for murder, it appeared that the deceased shortly before her death was questioned by various persons as to the circumstances in which the injury had been inflicted upon her, and that she was then unable to speak but was conscious and able to make signs. The Allahabad High Court held (Mahmúd J. dissenting) that the questions and signs taken together might be regarded as 'verbal' statements within the meaning of this section, 7 All. 385. Where a girl was killed by being raped, her dying declaration was admitted in 1866 on a charge of rape, 6 Suth. Cr. R. 75, col. 2. But apparently it would not be a 'relevant fact' under this section.

[2] i. e. inadmissible. The clause applies in any case, whether criminal or civil, see ill. (*a*).

[3] Sec. 114, ill. (*f*).

[4] 9 Ben. Appendix, 42.

[5] 11 Bom. 89.

[6] at the time the statement was made.

had special means of knowledge[1], and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing[2], on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(7) When the statement is contained in any deed, will, or other document, which relates to any such transaction as is mentioned in section 13, clause (*a*)[3].

or in document relating to transaction mentioned in s. 13, cl. (*a*);

(8) When the statement was made by a number[4] of persons, and expressed feelings or impressions on their part relevant to the matter in question.

or is made by several persons, and expresses feelings relevant to matter in question.

Illustrations.

(*a*) The question is, whether *A* was murdered by *B*; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by *B*; or

The question is, whether *A* was killed by *B* under such circumstances that a suit would lie against *B* by *A*'s widow.

Statements made by *A* as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b*) The question is as to the date of *A*'s birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended *A*'s mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether *A* was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended *A* at a place mentioned in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

[1] as being, e.g., a family priest, 4 C. L. R. 173. But the deposition of a deceased mukhtár who was not a member of the family and had no means of knowledge but as mukhtár is not admissible to prove a family pedigree, L. R., 12 I. A. 183: 12 Cal. 219, (S. C.) And see 9 All. 467, where it was held that cl. (5) does not apply to denials made by interested persons in the course of litigation, of pedigrees set up by their opponents.

[2] such as family bibles, prayer-books, almanacs. In 9 Cal. 613, a horoscope was excluded. As to proving inscriptions by copies, see sec. 65, cl. (*d*).

[3] 10 Ben. 263.

[4] i. e. a crowd: see ill. (*n*), and 23 Suth. Cr. 35.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to *A* for certain land.

A letter from *A*'s deceased agent to *A*, saying that he had received the rent on *A*'s account and held it at *A*'s orders, is a relevant fact.

(*f*) The question is, whether *A* and *B* were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether *A*, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by *A*, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether *A*, who is dead, was the father of *B*.

A statement by *A* that *B* was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of *A*.

A letter from *A*'s deceased father to a friend, announcing the birth of *A* on a given day, is a relevant fact[1].

(*m*) The question is, whether, and when, *A* and *B* were married.

An entry in a memorandum-book by *C*, the deceased father of *B*, of his daughter's marriage with *A* on a given date, is a relevant fact.

(*n*) *A* sues *B* for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving

33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it[2], is relevant for the purpose of proving, in a subsequent judicial proceeding,

[1] But see 13 Cal. 42.

[2] 3 Bom. 334, (British consul at Zanzibar). Evidence given in a proceeding *coram non judice* is not admissible under this section, 3 Mad. 48.

or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable[1] of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable[2].

in subsequent proceeding, the truth of facts therein stated.

Provided—

that the proceeding was between the same parties or their representatives in interest[3];

that the adverse party in the first proceeding had the right and opportunity to cross-examine[4];

that the questions[5] in issue were substantially the same[6] in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section[7].

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES[8].

34. Entries in books of account, regularly kept in the course of business[9], are relevant whenever they refer to a

Entries in books of account

[1] temporarily or permanently, 6 Cal. 774.

[2] 21 Suth. Cr. 56: 2 All. 648: 6 All. 224.

[3] 14 Ben. Appx 3: 15 Ben. 1; but see West & B. 1235, note (*d*). See also 12 Cal. 627.

[4] 21 Suth. Cr. 12: see sec. 138 infra.

[5] This does not mean 'all the questions,' 3 Mad. 48, 52, citing Tayl. Ev. § 467: 'If in a dispute respecting lands any fact comes directly in issue, the testimony given to that fact is admissible to prove the same point in another action between the same parties or their privies, though the last suit relates to other lands.'

[6] 7 Cal. 42.

[7] The explanation seems intended to do away with the objection that in criminal cases, the Crown is the prosecutor. This section does not apply to the deposition of a witness in a former suit when the witness is himself a defendant in the subsequent suit, and the deposition is sought to be used against him, not as evidence given between the parties, one of whom called him as a witness, but as a statement made by him, which would be evidence against him, whether he made it as a witness or on any other occasion, 14 Ben. Appendix 5, per Couch C. J.

The reason for admitting the statements mentioned in secs. 32 and 33 is that in the cases in question no better evidence is to be had.

[8] Sections 34–38 deal with statements made under circumstances which in themselves are a strong reason for believing the statements to be true. In such cases there is generally little use in calling the person by whom the statement was made, Stephen, *Evidence Act*, p. 126.

[9] This means books entered up from day to day, or (as in banks) from hour to hour, as transactions take place, 4 Bom 583–584. It in-

when relevant.

matter into which the Court has to inquire[1], but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues *B* for Rs. 1,000, and shows entries in his account-books showing *B* to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in performance of duty.

35. An entry in any public or other official book, register, or record[2], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact[3].

Relevancy of statements in maps, charts, and plans.

36. Statements of facts in issue[4] or relevant facts, made in published maps or charts generally offered for public sale[5], or in maps or plans made under the authority of Government[6], as to matters usually represented or stated in such maps, charts, or plans[7], are themselves relevant facts.

cludes books containing entries not made by, or at the dictation of, one having personal knowledge of the truth of the facts stated, if they are regularly kept in course of business, 1 Bom. 610.

[1] Such a book itself is not relevant to disprove an alleged transaction by the absence of any entry concerning it, 10 Cal. 1024, per Field J.

[2] e.g. a decree, 9 Cal. 586, 590.

[3] Under this section a wajib-ul-arz regularly entered and kept in the Collector's office and authenticated by the signatures of the officers who made it, is admissible to prove a family custom of inheritance, L. R., 7 I. A. 63: S. C., 5 Cal. 744. 'A statement made by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such an entry as facts in another case,' 8 Bom. 547. Sec 35 relates 'to that class of cases where a public officer has to enter in a register or other book some actual fact, which is known to him; as, for instance, the fact of a death or a marriage.' But the entry by the Collector under the [Bengal Land Registration] Act of 1876 that any particular person is the proprietor of certain land, is only a statement that such person is entitled to the property. it is the record of a right, not of a fact, 9 Cal. 434, 435, per Garth C.J.: see also 6 C. L. R. 139.

[4] See the definition supra, p. 851.

[5] 2 Ben. P. C. 139.

[6] for public purposes? see 5 Cal. 287: 9 Cal. 741, as to sec. 83. But see also 10 Suth. Civ. R. 443: 24 ibid. 192, 410. In Ireland, Sugden C. admitted the poor law valuation as evidence of the value of land comprised in it; see *Swift* v. *Mc Tiernan*, 11 Ir. Eq. Rep. 632.

[7] i. e. in the former class of maps, etc., the physical features of the country: in the latter class, not only such features, but also boundaries of villages, estates, and (in *khasrá* maps) fields.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature, contained in certain Acts of notifications.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant[1].

Relevancy of statements as to any law contained in law-books.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE, WHEN RELEVANT.

40. The existence of any judgment, order, or decree which by law prevents any Court from taking cognisance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognisance of such suit, or to hold such trial[2].

Previous judgments relevant to bar a second suit or trial.

[1] As to presuming the genuineness of the books mentioned in this section, see sec. 84 infra.

[2] This section 'might have been more clearly worded; but it was intended to include all judgments which by law operate to prevent a Court, whether civil or criminal, from taking cognisance of a suit, or trying any particular issue,' 6 Cal. 190, per

Relevancy of certain judgments in probate &c. jurisdiction.

41. A final judgment, order, or decree of a competent Court, in the exercise of probate[1], matrimonial[2], admiralty[3] or insolvency[4] jurisdiction, which confers upon or takes away from any person any legal character[5], or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree is conclusive proof

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order, or decree, declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree, declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment declares that it had been or should be his property[6];

Relevancy and effect

42. Judgments, orders, or decrees other than those mentioned

Garth C.J.; in other words, it admits all judgments *inter partes* which would operate as *res judicatae* in a second suit.

[1] See Acts X of 1865, sec. 235 (supra, vol. I. p. 447); XXI of 1870; V of 1881. Sec. 41 applies to probates of Hindú wills granted before the passing of the Hindú Wills Act, 14 Cal. 861, 875.

[2] See Act IV of 1869, XV of 1865, XXI of 1866, III of 1872, and XV of 1872.

[3] See 12 & 13 Vic. c. 96: 23 & 24 Vic. c. 88, and the Letters Patent of the High Court, 1865, sec. 32.

[4] See the Code of Civil Procedure, chap. xx, and for the High Courts 11 & 12 Vic. c. 21 and the Letters Patent.

[5] Such e. g. as that of an executor, 14 Cal. 875.

[6] This section, founded on Sir B. Peacock's judgment in F. B. R. 662 (S. C., 7 Suth. Civ. R. 339), admits judgments *in rem* as evidence in all subsequent suits, where the existence of the right is in issue, whether between the same parties or not, 6 Cal. 191. The Judicial Committee had held in 1871, that it seemed extremely doubtful whether there existed in India (exclusive of the peculiar jurisdiction exercised by the High Courts in matters of probate, prize, etc.) any ordinary Court capable of giving a judgment *in rem*, 11 Ben. 247.

in section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders, or decrees are not conclusive proof[1] of that which they state[2].

of judgments, orders or decrees, other than those mentioned in s. 41.

Illustrations.

A sues *B* for trespass on his land. *B* alleges the existence of a public right of way over the land, which *A* denies.

The existence of a decree in favour of the defendant, in a suit by *A* against *C* for a trespass on the same land, in which *C* alleged the existence of the same right of way, is relevant, but is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees, other than those mentioned in sections 40, 41, or 42, are irrelevant, unless the existence of such judgment, order, or decree is a fact in issue, or is relevant under some other provision of this Act[3].

Judgments etc. other than those mentioned in ss. 40–42, when relevant.

Illustrations.

(*a*) *A* and *B* separately sue *C* for a libel which reflects upon each of them. *C* in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against *C* for damages on the ground that *C* failed to make out his justification. The fact is irrelevant as between *B* and *C*.

(*b*) *A* prosecutes *B* for adultery with *C*, *A*'s wife.

B denies that *C* is *A*'s wife, but the Court convicts *B* of adultery.

Afterwards, *C* is prosecuted for bigamy in marrying *B* during *A*'s lifetime. *C* says that she never was *A*'s wife.

The judgment against *B* is irrelevant as against *C*.

(*c*) *A* prosecutes *B* for stealing a cow from him. *B* is convicted.

A, afterwards, sues *C* for the cow, which *B* had sold to him

[1] See sec. 4, supra p. 853.

[2] This section admits all judgments, not as *res judicatae*, but as evidence, although they may not be between the same parties, provided they relate to matters of a public nature relevant to the enquiry, 6 Cal. 191 (where '43' is misprinted for '42'). Sec. 42 does not appear to include judgments, etc., relating to general customs or rights, as to which see sec. 48.

[3] See sec. 13. The cases contemplated by section 43 are those in which the fact of any particular judgment having been given is a matter to be proved. As, for instance, if *A* sued *B* for slander in saying that he had been convicted of forgery, and *B* justified upon the ground that the alleged slander was true, the conviction of *A* for forgery would be a fact to be proved by *B* like any other fact in the case, and quite irrespective of whether *A* had been actually guilty, 6 Cal. 192. As to proving the existence of a judgment, its date, or legal consequences, see sec. 76 infra.

before his conviction. As between *A* and *C*, the judgment against *B* is irrelevant.

(*d*) *A* has obtained a decree for the possession of land against *B*. *C*, *B*'s son, murders *A* in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it[1], or was obtained by[2] fraud or collusion[3].

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law[4], or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity of handwriting[5], are relevant facts.

Such persons are called experts[6].

Illustrations.

(*a*) The question is, whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died, are relevant[7].

(*b*) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing

[1] See for illustrations 7 N. W. P. 99 and 6 Bom. 703.

[2] As to fraud see *Philipson* v. *Earl of Egremont*, 6 Q. B. 587, 605, and *Rogers* v. *Hadley*, 2 H. & C. 247. As to the meaning of 'fraud' see Act IX of 1872, sec. 17.

[3] The language of this section is wide enough to allow a party to the suit in which the judgment was obtained, to aver that it was obtained by the fraud of his antagonist, though the judgment stands unreversed. It is also wide enough to allow a party to set up his own fraud or collusion in procuring the former judgment, 6 Bom. 715, 716: per Latham J.: see 1 Suth. Civ. R. 156.

[4] See sec. 38 infra.

[5] The words as to handwriting were inserted by Act XVIII of 1872. They enable the High Courts to continue the useful practice of examining their interpreters and translators on questions of the genuineness of handwriting in the Native languages, especially in cases of comparison.

[6] Taylor, *Ev.* §§ 1418, 1419, 1421. They are only witnesses, not judges.

[7] The experts may be asked, what judgment they can form on the subject, assuming the facts stated in evidence to be true, see 9 Cal. 455, or, in other words, to what cause they would attribute *A*'s death, assuming the symptoms attending it to have been correctly described?

the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant[1].

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant[2].

Illustrations.

(*a*) The question is, whether *A* was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no sea-walls, began to be obstructed at about the same time, is relevant[3].

Opinion as to handwriting, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or

[1] For more as to proof of handwriting, see secs. 47 and 73.

[2] Taylor, *Ev.* § 337.

[3] as serving to elucidate the reasoning of the experts, *Folkes* v. *Chadd*, 3 Doug. 157.

when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of *A*, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to *A* and received letters purporting to be written by him. *C* is *B*'s clerk, whose duty it was to examine and file *B*'s correspondence. *D* is *B*'s broker, to whom *B* habitually submitted the letters purporting to be written by *A* for the purpose of advising with him thereon.

The opinions of *B*, *C*, and *D* on the question whether the letter is in the handwriting of *A* are relevant, though neither *B*, *C*, nor *D* ever saw *A* write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant[1].

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons[2].

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, etc, when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family[3],

the constitution and government of any religious or charitable foundation[4], or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

[1] As to the admissibility of a *wajib-ul-arz* under this section, see L. R., 7 I. A. 63, (S. C.) 5 Cal. 744, 754.

[2] It also probably includes *public* customs or rights.

[3] See sec. 13 supra.

[4] When these are settled by deed (as, for instance, in the case of Pachiappa's Charities, Madras), the deed would be the best evidence, and the opinions here mentioned ought not to be admitted, except when secondary evidence of the deed is admissible.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act[1], or in prosecutions under sections 494, 495, 497[2], or 498 of the Indian Penal Code[3]. Opinion on relationship, when relevant.

Illustrations.

(*a*) The question is, whether *A* and *B* were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant[4].

(*b*) The question is, whether *A* was the legitimate son of *B*. The fact that *A* was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. Grounds of opinion, when relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion[5].

CHARACTER WHEN RELEVANT.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant[6]. In civil cases character to prove conduct irrelevant.

[1] Act IV of 1869.

[2] See 5 All. 234.

[3] Taylor, §§ 172, 578. This section shows that, when marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved, 5 Cal. 566, overruling 8 Ben. Appx. 63. Otherwise in civil cases, *Lyle* v. *Ellwood*, L. R., 19 Eq. 98

[4] except, apparently, in the proceedings and prosecutions mentioned in the proviso. 'It is difficult,' says Mr Mayne (*Penal Code*, p. 405), 'to see why the evidence of the alleged husband and wife themselves, if given with sufficient particularity as to time, place, and circumstances, and subject to cross-examination, should not be enough to prove a fact of which they might possibly be the only available witnesses, and as to which their evidence, if believed, is conclusive.'

[5] He may also say that he acted on his opinion. See secs. 8 and 11 supra, and in England *Stephenson* v. *the River Tyne Impt. Commrs.*, 17 W. R. 590.

[6] Taylor, §§ 354, 355.

In criminal cases, good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant[1].

Previous conviction relevant: not bad character except in reply.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence[2] is relevant[3]; but the fact that he has a bad character is irrelevant[4], unless evidence has been given that he has a good character, in which case it becomes relevant[5].

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue[6].

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant[7].

Explanation.—In sections 52, 53, 54, and 55, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

[1] Taylor, § 351.

[2] however dissimilar in character. Contrast 34 & 35 Vic. c. 112, s. 19, in cases of receiving stolen goods.

[3] See sec. 11 infra.

[4] 6 Suth. Cr. 72, col. 2: 7 ibid. 7, col. 2: 8 ibid. 11, col. 2.

[5] See also sec. 155 as to cases of rape.

[6] Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded should the prisoner be convicted, 5 Cal. 768, and this was the view taken by the legislature in enacting the Code of Criminal Procedure, s. 310. But see 14 Cal. 172, quoting the report of the Select Committee (*Gazette of India*, June 24, 1871, p. 239): 'We permit evidence to be given of previous convictions against a prisoner *for the purpose of prejudicing him.* We do not see why he should not be prejudiced by such evidence if it is true.' As to evidence of previous convictions and general character in Native Courts Martial, see Act V of 1869, art. 117.

[7] See Taylor, § 359: *Scott* v. *Sampson*, L. R., 8 Q. B. D. 491.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will take judicial notice need be proved.

Fact judicially noticeable.

57. The Court shall take judicial notice of the following facts [1]:—

Facts of which Court must take judicial notice.

(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India [2]:

(2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3) Articles of War for Her Majesty's Army or Navy:

(4) The course of proceeding of Parliament and of the Councils for the purposes of making laws and regulations established under the Indian Councils Act [3], or any other law for the time being relating thereto:

Explanation.—The word 'Parliament,' in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;
2. The Parliament of Great Britain;
3. The Parliament of England;
4. The Parliament of Scotland, and
5. The Parliament of Ireland:

[1] The list is far from complete; for instance, the Anglo-Indian Courts take judicial notice of the ordinary course of nature, the meaning of English words, and all other matters which they are directed by any Act to notice, such as, in Bengal, lists of landholders who have not made roadcess returns (Ben. Act IX of 1880, s. 19); in Madras, bye-laws framed by the commissioner of police (Mad. Act III of 1862, s. 5); in Bombay, notifications in the Gazette (Bom. Act X of 1866, s. 4); in Oudh the list of taluqdárs and grantees published by the Chief Commissioner (Act I of 1869, s. 10).

[2] e.g. the Muhammadan ecclesiastical law, 7 All. 461.

[3] 1861, i.e. 24 & 25 Vic. c. 67.

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6) All seals of which English Courts take judicial notice[1]: the seals of all the Courts[2] of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of notaries public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office[3] in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government[4]:

(8) The existence, title, and national flag of every State or Sovereign recognized by the British Crown[5]:

(9) The divisions of time[6], the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official Gazette[7]:

(10) The territories under the dominion of the British Crown:

(11) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakíls, pleaders, and other persons authorized by law to appear or act before it[8]:

(13) The rule of the road on land or at sea.

In all these cases, and also on all matters of public history,

[1] Taylor, § 6.

[2] see sec. 3 supra, p. 851, and 14 Cal. 176.

[3] Act V of 1883, s. 32, cl. (2).

[4] 1 Ben. O. Cr. 27 (Justices of the Peace): Ind. Jur. N. S. 106: 4 Ben. O. J. 51 (jailor).

[5] The Courts also take judicial notice of the *non*-recognition of foreign states, Code of Civil Procedure, s. 431, supra p. 636.

[6] This includes the Native eras.

[7] of any Local Government?

[8] See Act XVIII of 1879.

literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference [1].

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so [2].

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing [3], or which, before the hearing [3], they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings [4]: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions [5].

Facts admitted need not be proved.

CHAPTER IV.

OF ORAL EVIDENCE.

59. All facts, except the contents of documents, may be proved by oral evidence [6].

Proof of facts by oral evidence.

60. Oral evidence must [7], in all cases whatever, be direct; That is to say—

Oral evidence must be direct.

If it refers to a fact which could be seen, it [8] must be the evidence of a witness who says he saw it [9];

If it refers to a fact which could be heard, it [8] must be the evidence of a witness who says he heard it [9];

[1] See, for instance, 12 Moo. I. A. 398 (sworn translations of Sanskrit works on adoption): 10 Cal. 140 (Taylor's *Medical Jurisprudence*): 7 Ben. 70 (Harington's *Analysis*).

[2] *Van Omeron* v. *Dowick*, 2 Campb. 44

[3] i.e. when there are more hearings than one, the final hearing. Thus where *A* sues to eject *B* for non-payment of rent, and *B* at the first hearing orally asserts payment in full, at the final hearing no evidence of title or tenancy need be offered.

[4] 5 Bom. 143; query, what 'rule of pleading' is referred to?

[5] See more as to admissions, sec. 31.

[6] See Ben. F. B. R. 3 (adjustment of accounts): 1 All. 442 (part-payment of mortgage debt).

[7] This imposes a duty on the Court to exclude all oral evidence that is not 'direct,' whether the party against whom it is tendered objects or not.

[8] i.e. the oral evidence.

[9] i.e. the fact deposed to, 12 Ben. Appendix, 18, 19.

If it refers to a fact which could be perceived by any other sense or in any other manner, it[1] must be the evidence of a witness who says he perceived it[2] by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it[1] must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale[3], and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation I.—Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it[4].

Explanation II.—Where a number of documents are all made by one uniform process, as in the case of printing,

[1] i. e. the oral evidence.

[2] i.e. the fact deposed to, 12 Ben. Appendix, 18, 19.

[3] As to the burden of proving this, see sec. 104 infra.

[4] and secondary evidence as against the other parties, sec. 63, cl. (4).

lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original[1].

63. Secondary evidence means and includes— Secondary evidence.

(1) Certified copies given under the provisions hereinafter contained[2];

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them[3];

(5) Oral accounts of the contents of a document given by some person who has himself seen it[4].

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned. Proof of documents by primary evidence.

[1] *R.* v. *Watson*, 32 Howell's S. T. 81-86.

[2] Sec. 76. As to presuming correctness of certified copies, see sec. 79.

[3] *Munn* v. *Godbold*, 3 Bing. 292.

[4] i.e. the original document, 7 Bom. 139.

When secondary evidence relating to documents may be given.

65. Secondary evidence may be given[1] of the existence, condition, or contents of a document[2] in the following cases:—

(*a*) When the original is shown or appears to be in the possession or power

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to[3], the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it[4];

(*b*) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) When the original has been destroyed or lost[5], or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time[6];

(*d*) When the original is of such a nature as not to be easily moveable[7];

(*e*) When the original is a public document within the meaning of section 74;

(*f*) When the original is a document of which a certified

[1] in criminal as well as in civil proceedings, and see 14 Cal. 486.

[2] i.e. a document admissible in evidence. If it is inadmissible in consequence of not being registered (6 Mad. 117) or not being properly stamped, secondary evidence cannot be given of its existence, etc.

[3] This seems intended to include the case of a person not legally bound to produce the document, who refuses to produce it: *Miles* v. *Oddy*, 6 C.&P. 732: *Marston* v. *Downes*, 1 A.&E. 31.

[4] This seems to mean: 'When any person in whose possession or power the original may be, after receiving the notice (if any) required by sec. 66, does not produce such original,' see *R.* v. *Watson*, 2 T. R. 201. There need be no evidence of refusal to produce, 9 Cal. 944.

[5] 7 Cal. 98. The destruction or loss may be proved by the admission of the party or his pleader, *R.* v. *Haworth*, 4 C. & P. 254.

[6] 22 Suth. Civ. R. 303: 5 Cal. 886: 7 Cal. 98. The rule in the Limitation Act, sec. 19, as to acknowledgments is an exception to this clause.

[7] *Mortimer* v. *M'Callan*, 6 M. & W. 68, where Lord Abinger mentioned a case in which a libel was written on the wall of a jail, and the writer was convicted on mere proof of his handwriting. The case where the original is in a country from which it is not permitted to be removed (*Alivon* v. *Furnival*, 1 C. M. & R. 277, 291) is not provided for, unless perhaps by the latter part of clause (*c*).

copy is permitted by this Act, or by any other law in force[1] in British India[2], to be given in evidence;

(*g*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection[3].

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document is admissible[4].

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence[5], is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents[6] of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party[7] in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law[8]; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it[9]:—

(1) When the document to be proved is itself a notice;

(2) When, from the nature of the case, the adverse party must know that he will be required to produce it[10];

[1] for the time being.

[2] See e.g. the Registration Act, III of 1877, sec. 57.

[3] See the Code of Civil Procedure, sec. 394, supra p. 625. *Roberts* v. *Doxon*, 1 Peake, 116.

[4] These words are not controlled by the penultimate clause of sec. 66, 5 Cal. 573.

[5] This rule does not apply when the original has been lost or destroyed, 6 Mad. 80, where an uncertified copy of a destroyed plaint was admitted. See also 5 Cal. 568.

[6] not, apparently, of the existence or condition.

[7] This means not only adversary in the cause, but also stranger 'legally bound to produce' the document, sec. 65, cl. (*a*), and see Field, 426.

[8] See Code of Civil Procedure, sec. 131.

[9] i.e. the notice.

[10] e.g. in trover for a bond, see *How* v. *Hall*, 14 East, 274; Tayl. § 452.

(3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) When the adverse party or his agent has the original in court [1];

(5) When the adverse party or his agent has admitted the loss of the document;

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court [2].

Proof of signature person alleged to have signed.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved [3] to be in his handwriting.

Proof of execution of document required to be attested.

68. If a document is required by law [4] to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence [5].

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom [6], it must be proved that the attestation of one attesting witness at least is in his handwriting [7], and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by

70. The admission of a party to an attested document of its execution [8] by himself shall be sufficient proof of its

[1] *Dwyer* v. *Collins*, 7 Ex. 639.

[2] 9 Cal. 939: 2 Mad. 295, 301. If a document is in the custody of the person who desires to use it as evidence, nothing in sec. 66 relieves him from producing it, 4 All. 406, 410.

[3] See sec. 47 supra, and sec. 73 infra. See also 12 Ben. Appx. 18, where Markby J. held that sec. 67 did not require direct evidence of the handwriting of the person alleged to have signed to be given by some one who saw the signature affixed. Nor does it require the writer of the document to be examined as a witness or the subscribing witnesses to be produced, 21 Suth. Civ. R. 429. As to the proper questions regarding signature, see 23 Suth. Civ. R. 391.

[4] i.e. by some statute, act, or regulation.

[5] But see sec. 90, infra, as to documents thirty years old.

[6] of Great Britain and Ireland.

[7] In the case of a marksman, this would probably be held to include his mark.

[8] Sec. 22 and sec. 65, cl. (*b*) relate to admissions as to the *contents* of a document.

execution as against him, though it be a document required by law to be attested.

party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Attested document not required to be attested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved[1] to the satisfaction of the Court to have been written or made by that person may be compared[2] with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

Comparison of signature, etc., with others admitted or proved.

The Court may direct any person present in court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

74. The following documents are public documents[3]:—

Public documents.

1. Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial, and executive[4], whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents[5].

[1] 1 Mad. H. C. 167: 21 Suth. Civ. R. 6.

[2] by a witness (sec. 47) or by the Court, and in criminal as well as in civil cases.

[3] An *anumatipatra* is not a 'public document,' 14 Cal. 486; S. C. L. R., 14 I. A. 71.

[4] Clause (iii) seems to include the records of Magistrates and Justices of the Peace acting in their administrative as well as their judicial capacity. It includes letters between district authorities, 23 Suth. Civ. R. 272, and a jamabandi prepared by a Deputy Collector while engaged in the settlement of land under Ben. Reg. VII of 1822, 4 Cal. 79 (secus Field 435); but not a certificate of the Board of Trade, 5 Cal. 568; nor Government measurement chitthás produced from the collectorate, 7 Cal. 76.

[5] e.g. of original wills (Succession Act, sec. 255, supra vol. I. p. 456), or registered documents (Act III of 1877, sec. 57, infra).

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect [1], shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies [2].

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies [3].

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures [4],

[1] See Taylor, § 1483. The chief public documents referred to in sec. 76 are the register of British ships, Act X of 1841, sec. 4; the register of copyright in books published in India (Act XX of 1847, sec. 3); log-books (Act I of 1859, secs. 103-108); the declarations of the keepers of printing presses and of the printers and publishers of periodicals (Act XXV of 1867, sec. 6); marriage registers (Act XV of 1872, secs. 79, 80); the books of the Administrator General (Act II of 1874, sec. 43); registers directed by the Registration Act III of 1877; registers and documents kept by the registrar of joint stock companies (Act VI of 1882, sec. 220, cl. (*e*)); registers prepared under the Oudh Land-revenue Act XVII of 1876, sec. 67.

[2] L. R., 14 I. A. 71.

[3] The certified copy of a plaint was admitted in 10 Ben. Appx. 31.

[4] established under the Indian Councils Act, 1861.

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders, or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer[1]:

(4) The acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council:

(5) The proceedings of a municipal body in British India,

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume[2] every document[3] purporting to be a certificate[4], certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the

[1] And see the Documentary Evidence Act, 1868 (31 Vic. c. 37).

[2] sec. 4, p. 853, supra.

[3] including the signature and (where sealed) the seal.

[4] See the Registration Act (III of 1877) sec. 60, and the Code of Criminal Procedure, secs. 467, 473, 511.

Governor General in Council, to be genuine[1]: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumptions as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law[2], and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine: that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement, or confession was duly taken[3].

Presumption as to Gazettes, newspapers, private Acts, and other documents.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody[4].

[1] This only enacts, as regards copies of documents recorded in Collectors, or Magistrates' kachhahrís, that the copy is correct and that the original exists in the archives. Such copies are no evidence of the genuineness or authenticity of the originals, or of the facts to which they relate.

[2] See 6 Cal. 762: 8 Cal. 616; and sec. 91 infra.

[3] This does not render the deposition of an accused person admissible in evidence against him in a subsequent proceeding, without proof that he was the deponent, 11 Cal. 580. But the Magistrate is not expressly required to attest depositions in the presence of the accused. Such attestation therefore does not fall within the scope of the presumption provided for by sec. 80, and if required for any special purpose, such as that of sec. 509 of the Code, must be established *aliunde*, 9 All. 721, note (1).

[4] As to 'proper custody' see the explanation to sec. 90 infra.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland[1], would be admissible in proof of any particular in any Court of justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims;

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to document admissible in England without proof of seal or signature.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government[2] were so made, and are accurate[3]; but maps or plans made for the purposes of any cause[4] must be proved to be accurate.

Maps or plans made by authority of Government.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country[5].

Collections of laws and reports of decisions.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Powers-of-attorney.

[1] See 8 & 9 Vic. c. 113: 14 & 15 Vic. c. 99, sec. 9: 18 & 19 Vic. c. 42, sec. 3: 33 & 34 Vic. c. 52.

[2] This applies to *thaqbast* maps, 22 Suth. Civ. R. 519, but not to *chitthás* made by Government for its private use, 9 Cal. 741, nor to a map prepared by an officer of government, while in charge of a *khás mahál* of which Government is in possession merely as a private proprietor. Such maps may be admissible under sec. 13, 5 Cal. 287. The presumption under this section (83) is in no way affected by the fact that the map or plan has been superseded by a later map or plan made under the authority of Government, 5 Cal. 822. As to maps, see also sec. 87 and sec. 90.

[3] as to drawing and correctness of measurement, not as to boundaries according to the rights of parties, 25 Suth. Civ. R. 179.

[4] Some such words as 'or other proceeding civil or criminal' seem wanted here.

[5] See sec. 38 supra.

Certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country [1] to be the manner commonly in use in that country for the certification of copies of judicial records [2].

Books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published [3].

Telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Due execution, etc. of documents not produced.

89. The Court shall presume [4] that every document, called for and not produced after notice to produce, was attested, stamped [5], and executed in the manner required by law [6].

90. Where any document, purporting or proved to be

[1] Where, as in Kuch Bihár, there is no such representative, see 14 Cal. 546.

[2] See sec. 78, cl. (6), and sec. 82.

[3] See sec. 36.

[4] See sec. 4.

[5] *Closmadeuc* v. *Carel*, 18 C. B. 44. The Act ignores the case where the document is shown to have remained unstamped for some time after its execution. In such case the party who relies on the instrument must prove it to have been duly stamped, *Marine Investment Co.* v. *Haviside*, L. R., 5 E. & I. App. 624. The Act contains no rule as to when alterations and interlineations shall be presumed to have been made (*a*) in the case of a will, (*b*) in the case of other documents. In case (*a*) they are presumed to have been made after the execution of the will, *Simmons* v. *Rudall*, 1 Sim. N. S. 136. In case (*b*) they are presumed to have been so made that the making would not be an offence, *Gordon's case*, Dearsl. & P. 592, per Jervis C.J.

[6] See sec. 66 supra and sec. 164 infra.

thirty years old[1], is produced[2] from any custody which the Court in the particular case considers proper, the Court may[3] presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested[4]. Documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be[5]; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable[6]. Proper custody.

This explanation applies also to section 81.

Illustrations:

(*a*) *A* has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b*) *A* produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) *A*, a connection of *B*, produces deeds relating to lands in *B*'s possession, which were deposited with him by *B* for safe custody. The custody is proper.

[1] 6 C. L. R. 135.

[2] 5 Cal. 887, where Wilson J. held that the explanation of the section was not limited to cases in which the document is actually produced in Court.

[3] It is not *bound* to presume, 6 Cal. 211; and this section requires great care in its application, so common is the practice of forging documents years before they are intended to be used as evidence. Nothing can be easier than for an unscrupulous person who is wrongfully in possession of property and wants to make out a title to it, to forge a deed in his own favour more than thirty years old, and then produce it himself in court and say that, because he is in possession of the land, he must needs be the proper custodian of the deed, and so relieve himself from the necessity of proving its execution, 11 Cal. 541, 542, per Garth C.J. See also 3 Ben. A. C. J. 258: 3 Cal. 557.

[4] See Tayl. § 598: 4 Bom. H. C. A. C. J. 60: 5 ibid. 135: 6 ibid. 90: 11 Bom. 89, 98. But when a document more than thirty years old purports to be signed by an agent on behalf of a principal, there is no presumption as to the agent's authority, 3 Cal. 557: 6 Cal. 209.

[5] The 'custody' of course is matter to be established by evidence, 10 Suth. Civ. R. 1: 12 ibid. 472: 21 ibid. 45: 24 ibid. 428, col. 2. But the mere fact that a document is filed by a party to a suit is sometimes accepted by the provincial courts as sufficient to show the previous custody, and thus fictitious documents are introduced without any one having incurred the responsibility of pledging his oath to the genuineness.

[6] 2 Ben. P. C. 85: 5 Cal. 918.

West Bengal Secretariat Library

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts etc. reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced[1] to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document[2], no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained[3].

Exception I.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved[4].

Exception II.—Wills admitted to probate in British India may be proved by the probate[5].

Explanation I.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation II.—Where there are more originals than one, one original only need be proved.

Explanation III.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

[1] by, or by consent of, the parties, Tayl. § 401 : 2 Bom. 635 : 9 All. 356.

[2] as in the case of depositions (supra, pp. 190, 191); judgments in criminal cases (supra, p. 194); judgments and decrees in civil cases (supra, pp. 540, 541); wills, certain mortgages, leases, and gifts (vol. I, supra, pp. 358, 775, 801, 810).

[3] But the existence of a promissory note does not preclude the payee from resorting to his original consideration and giving evidence of an oral admission of the debt, 4 All. 135 : 7 Cal. 256 : but see 10 Mad. 94, 96. The existence of an instrument whereby *A* relinquishes to his landlord *B* his right of occupying certain land, and requests *B* to register the land in the name of *A*'s vendee *C*, does not exclude oral evidence of the transaction between *A* and *C*, 2 Mad. 117.

An informal confession is inadmissible, even though no objection be made to its reception, 10 Bom. H. C. 497.

[4] Taylor, § 171.

[5] 8 Ben. 219.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) *A* contracts, in writing, with *B*, for the delivery of indigo upon certain terms. The contract mentions the fact that *B* had paid *A* the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) *A* gives *B* a receipt for money paid by *B*.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying [1], adding to, or subtracting from, its terms [2]:

Proviso (1).—Any fact may be proved which would invalidate any document [3], or which would entitle any person to

[1] 9 All. 392.

[2] 1 Bom. 333: 5 Cal. 300: 6 Cal. 337 (where Garth C.J. thought that sec. 92 applied only where upon the face of it the written instrument appears to contain the whole contract): 11 Bom. 644. Sections 91 and 92 contain with slight modifications the rule of the English common law. But when subsequently dealing with the equitable jurisdiction of the Courts the legislature has shown the clearest intention to relax the provisions of those sections, so as to bring them into conformity with the practice of the Court of Chancery. Thus the Specific Relief Act, sec. 26, clause (*c*), would enable a defendant in a suit for specific relief to prove an oral agreement for reconveyance, in bar of the plaintiff's conveyance, 4 Bom. 607, and see vol. I of this work, p. 969, note 1. It has, accordingly, been held that section 92 does not exclude evidence of subsequent conduct and surrounding circumstances in order to show (as against a person fraudulently claiming to be an absolute purchaser) that a document purporting to be a conveyance is really a mortgage deed, 9 Cal. 900: 4 Bom. 594. Nor does it prevent a party to a contract from showing that there was no consideration, or that the consideration differed from that described in the contract, 3 Bom. 159. But in a prosecution under the Penal Code, sec. 492, the effect of sec. 92 of the Evidence Act is to preclude a charge for breach of any stipulation not contained in the writing.

[3] or any part of it.

any decree or order relating thereto[1]; such as fraud[2], intimidation[3], illegality[4], want of due execution, want of capacity[5] in any contracting party, want[6] or failure of consideration[7], or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved[8]. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation[9] under any such contract, grant, or disposition of property, may be proved[10].

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according

[1] See illustrations (*d*) and (*e*).

[2] See the Contract Act, secs. 14, 17, and 19; see also 9 Cal. 528, following 4 Bom. 594, and dissenting from 5 Cal. 300. In 1 Bom. 333 the Court held that the fraud here mentioned must be fraud contemporaneous with, and not subsequent to, the making of the document. And in 6 Cal. 338, Garth C.J. held that proviso (1) applied to cases where evidence is admitted to show that a contract is void or voidable, or subject to reformation upon the ground of fraud, duress, illegality, etc. in its inception; and not to cases where the agreement being in itself perfectly valid and free from any taint of that kind, one of the parties attempts to make a fraudulent use of it, as against the other. But in 4 Bom. 608, M. Melvill J. seemed to think that the proviso was large enough to let in evidence of such subsequent conduct as, in the view of a Court of Equity, would amount to fraud, and would entitle a grantor to a decree restraining the grantee from proceeding on his document.

[3] See Contract Act, sec. 15, and Succession Act, sec. 48.

[4] See Contract Act, secs. 23, 24. A void contract (e. g. a wager, Contract Act, sec. 30) is not illegal within the meaning of this proviso.

[5] See Contract Act, secs. 11 & 12.

[6] *A* draws a bill of exchange on *B*, and *B* accepts it. *B* may show that he had no consideration for the bill, and that he accepted it for the accommodation of *A*, or some other party, 3 Cal. 184.

[7] See Contract Act, sec. 25; 11 Cal. 486.

[8] *Morgan* v. *Griffith*, L. R., 6 Ex. 70: *Lindley* v. *Lacey*, 17 C.B. N. S. 578, Taylor, § 1135.

[9] i. e. 'any obligation whatever under the contract, not some particular obligation which the contract may contain,' 6 Cal. 433, per Garth C.J.; 7 Mad. 22. See *Pym* v. *Campbell*, 6 E. & B. 370: *Wallis* v. *Littell*, 11 C. B. N. S. 369.

[10] Taylor, *on Evidence*, § 1135. 6 Cal. 435: 1 Mad. H. C. 457.

to the law in force for the time being as to the registration of documents[1].

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract[2].

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts[3].

Illustrations.

(*a*) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved[4].

(*b*) *A* agrees absolutely in writing to pay *B* Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(*c*) An estate, called 'the Rámpur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved[5].

(*d*) *A* enters into a written contract with *B* to work certain mines, the property of *B*, upon certain terms. *A* was induced to do so by a misrepresentation of *B*'s as to their value. The fact may be proved.

(*e*) *A* institutes a suit against *B* for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. *A* may prove that such a mistake was made as would by law entitle him to have the contract reformed[6].

(*f*) *A* orders goods of *B* by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. *B* sues

[1] 2 Bom. 547: 11 Bom. 47: 5 Mad. 8: see *Goss* v. *Lord Nugent*, 5 B. & Ad. 58, 65.

[2] *Wigglesworth* v. *Dallison*, 1 Smith, L. C. 9th ed. pp. 569-603: *Johnson* v. *Raylton*, L. R., 7 Q. B. D. 438.

[3] Thus (to quote two of Mr. Field's illustrations) if a man agree in writing to purchase 'the Rámpur estate' or 'Mr. Smith's house in Calcutta,' without further words of description, oral evidence alone can show the particular thing intended.

The rule laid down in sec. 92 is taken almost verbatim from Taylor on *Evidence* (1st ed.) § 813 [= § 1132 of the 8th ed.], and the exceptions which follow in the several provisoes are discussed in §§ 816 to 841 [= §§ 1135-1160 of the 8th ed.] of the same work, 6 Cal. 338.

[4] *Weston* v. *Emes*, 1 Tau. 115.

[5] *Barton* v. *Dawes*, 10 C.B. 261-265.

[6] Story, *Eq. Jur.* secs. 153-162. See the Specific Relief Act, sec. 34.

A for the price. *A* may show that the goods were supplied on credit for a term still unexpired.

(*g*) *A* sells *B* a horse and verbally warrants him sound. *A* gives *B* a paper in these words: 'Bought of *A* a horse for Rs. 500.' *B* may prove the verbal warranty.

(*h*) *A* hires lodgings of *B*, and gives *B* a card on which is written—'Rooms, Rs. 200 a month.' *A* may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of *B* for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. *A* may not prove that board was included in the terms verbally.

(*i*) *A* applies to *B* for a debt due to *A* by sending a receipt for the money. *B* keeps the receipt and does not send the money. In a suit for the amount, *A* may prove this.

(*j*) *A* and *B* make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with *B*, who sues *A* upon it. *A* may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) *A* agrees, in writing, to sell a horse to *B* for 'Rs. 1,000, or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled[1].

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to *B*, by deed, 'my estate at Rámpur containing 100 bíghás.' *A* has an estate at Rámpur containing 100 bíghás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size[2].

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

[1] So if by will *A* leaves a legacy to ——, *Baylis* v. *A.G.* 2 Atk. 239. But see *Re Bacon's Will*, L. R., 31 Ch. Div. 460.

[2] So evidence may not be given that, in a policy of insurance, the word 'boats' means boats not slung on the outside of the ship on the quarter, *Blackett* v. *Royal Exchange Assurance Co.*, 2 C. & J. 244.

Illustration.

A sells to *B*, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which *B* had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a*) *A* agrees to sell to *B*, for Rs. 1,000, 'my white horse.' *A* has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) *A* agrees to accompany *B* to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sindh was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show of which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to *B* 'my land at *X* in the occupation of *Y*.' *A* has land at *X*, but not in the occupation of *Y*, and he has land in the occupation of *Y*, but it is not at *X*. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible character, etc.

Illustration.

A, a sculptor, agrees to sell to *B* 'all my mods.' *A* has both models and modelling tools. Evidence may be given to show which he meant to sell[1].

[1] *Goblet* v. *Beechey*, 3 Sim. 24, an illustration curiously inappropriate to India. One racy of the soil is given by Mr. Field, p. 478: A grant by a Rájá is 'dated 25th Phálgun *in the year sixteen*.' The meaning of the words italicised may be shown by reference to another grant signed by the same officer, from which it appears that 'the year thirty-seven' means the 37th year of the Rájá.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and *B* make a contract in writing that *B* shall sell *A* certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to *A*. This could not be shown as between *A* and *B*, but it might be shown by *C*, if it affected his interests.

Saving of Succession Act as to wills.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills[1].

[1] Act X of 1865, secs. 61-98.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. WHOEVER desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist[1].

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) *A* desires a Court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that *B* has committed the crime.

(*b*) *A* desires a Court to give judgment that he is entitled to certain land in the possession of *B*, by reason of facts which he asserts, and which *B* denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side[2].

Illustrations.

(*a*) *A* sues *B* for land of which *B* is in possession, and which, as *A* asserts, was left to *A* by the will of *C*, *B*'s father.

If no evidence were given on either side, *B* would be entitled to retain his possession.

Therefore the burden of proof is on *A*.

(*b*) *A* sues *B* for the money due on a bond.

The execution of the bond is admitted, but *B* says that it was obtained by fraud, which *A* denies.

If no evidence were given on either side, *A* would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B*.

[1] His right or liability may also depend on the non-existence of facts which he denies.

[2] 9 All. 713. The section seems suggested by *Amos* v. *Hughes*, 1 Moo. & Rob. 464, per Alderson B., cited in Tayl. § 365.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person [1].

Illustration.

(*a*) *A* prosecutes *B* for theft, and wishes the Court to believe that *B* admitted the theft to *C*. *A* must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) *A* wishes to prove a dying declaration by *B*. *A* must prove *B*'s death.

(*b*) *A* wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost [2].

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code [3], or within any special exception or proviso contained in any other part of the same Code [4], or in any law defining the offence, is upon him, and the Court shall presume [5] the absence of such circumstances [6].

Illustrations.

(*a*) *A*, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on *A*.

(*b*) *A*, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on *A*.

(*c*) Section 325 of the Indian Penal Code provides that, whoever,

[1] See, for example, the Succession Act, sec. 19, and the Code of Criminal Procedure, sec. 44, supra, p. 76; in England, see Taylor, §§ 372, 373.

[2] unless the opposite party admit the loss.

[3] Chap. IV, and supra, vol. I, pp. 115-126.

[4] If therefore *A* is accused of taking coining tools out of a mint without lawful authority (Penal Code, sec. 245) the burden of proving such authority is on *A*. So if *A* is accused of defamation, the burden of proving that he comes within the exceptions in the Penal Code, sec. 499, is on *A*.

[5] Sec. 4, supra p. 853.

[6] 4 Cal. 127.

except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntary causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on *A*.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) *A* is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him[1].

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it[2].

Death of person known to have lived within 30 years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it[3].

That person is alive who has not been heard of for 7 years.

[1] So when *A* hires a horse which when delivered to him was sound, but when returned was foundered, the burden of proving how the horse was foundered lies on *A*, *Collins* v. *Bennet*, cited in 9 All. 406. So in a suit against a zamíndár to recover the sale of a patní tenure on the ground of non-service of the notice required by Ben. Reg. VIII of 1819, sec. 8, cl. (2), the burden of proving service lies on the zamíndár, 21 Suth. Civ. R. 397. So in cases between mortgagor and mortgagee, where there is no evidence as to the amount of the debt, as the mortgagee would naturally have the mortgage deed, it lies upon him to prove that such amount is larger than that stated by the mortgagor, L. R., 3 I. A. 85: 5 All. 186. So in a suit to enforce a right of preemption, in which the plaintiff impugns the correctness of the price stated in the instrument of sale, very slight evidence is ordinarily sufficient to establish a *primâ facie* case in his favour, and when such case is established, it rests upon the defendants, vendor and vendee, to prove that the price was larger than that stated by the preemptor, 5 All. 184, 187.

The Act should have here laid down some rule as to the duty of the party offering in evidence an instrument which, on its production, appears to have been altered, see Taylor, §§ 1819–1821, and 1 Moo. I. A. 420: 9 ibid. 1.

[2] 8 All. 614.

[3] Taylor, § 200: 2 All. 625: 8 All. 614: 11 Bom. 433. The rule of Muhammadan law that a missing person is to be regarded as alive till the lapse of 90 years from the date of his birth is a rule of evidence, and is superseded by this section, 7 All. 297. In 1 All. 53 the

Relation of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it [1].

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner [2].

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position [3] of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence [4].

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no

Court seemed to hold that the Hindú law as to presumption of death (as to which see West and B. 676, note *e*) would still apply in administration suits.

[1] 4 Cal. 317.

[2] i.e. possession is *primâ facie* evidence of a complete title, 9 Bom. 140. An illustration of this section is afforded by a case in 6 N.W. P. 36, where *A* was in possession of certain land, and *B* alleged that *A* was not in possession as owner of the full proprietary right, but (as the representative of a mortgagee) having a qualified right. The burden of proving this qualification was held to lie on *B*. See also 10 Moo. I. A. 528. As to the burden of proving a mortgage of shares alleged to be sold, see 1 All. 194.

[3] i. e. a *lawful* relation, see *Hargreave* v. *Everard*, 6 Ir. Eq. Rep. N. S. 278, where the parties were paramour and adulteress.

[4] 11 Moo. I. A. 551 : Story, Eq. Jur. secs. 307 et seq.: Taylor, § 151 et seq.

access to each other at any time when he could have been begotten [1].

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification [2]. Proof of cession of territory.

114. The Court [3] may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case [4]. Court may presume existence of certain facts.

Illustrations.

The Court may presume—

(*a*) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession [5].

(*b*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars [6].

(*c*) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration [7].

(*d*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence [8].

(*e*) That judicial and official acts have been regularily performed [9].

[1] 3 Moo. I. A. 245, 259. If, therefore, the question is, whether *A* is the legitimate son of *B* by *C*, his wife, evidence to show that *B* was impotent, or that, during the cohabitation of *B* with *C*, she committed adultery with *D*, is not admissible. The latter part of the section seems to require qualification. Regard should be had to the physical condition of the husband, and the proof should not be conclusive if the circumstances of the access were such as to render it improbable that sexual intercourse took place when the access occurred.

[2] The Governor General in Council, being precluded by 24 & 25 Vic. c. 67, sec. 22, from legislating directly as to the sovereignty or dominion of the Crown over any part of its territories in India, or as to the allegiance of British subjects, could not by any legislative Act purporting to make a notification in the Government Gazette conclusive evidence of a cession of territory, exclude inquiry as to the nature and lawfulness of the cession, L. R., 3 I. A. 152, 153 (S.C., 1 Bom. 367, 461), per Lord Selborne; and see 10 Bom. H. C. 37 and 2 All. 1.

[3] This does not include the jury.

[4] 9 All. 690; but see 13 Cal. 197.

[5] 23 Suth. Cr. R. 16, col. 2.

[6] Sec. 133 infra, and see per Peacock C.J., Ben. F. B. 459. 'Material particulars' seem to mean matters directly connecting the prisoner with the offence, 5 Suth. Cr. R. 18.

[7] See Act XXVI of 1881, sec. 118, cl. (*a*).

[8] 9 Cal. 744, 802.

[9] Taylor, §§ 143-147. But sec. 114 does not direct the Court to presume the existence of facts likely

(*f*) That the common course of business has been followed in particular cases.

(*g*) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it[1].

(*h*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.

(*i*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged[2].

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (*b*)—*A*, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. *B*, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of *A* and himself:

As to illustration (*b*)—A crime is committed by several persons. *A*, *B*, and *C*, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating *D*, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—*A*, the drawer of a bill of exchange, was a man of business. *B*, the acceptor, was a young and ignorant person, completely under *A*'s influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is, whether a letter was

to have happened, such as the regular performance of judicial acts; it leaves the Court free to make the presumption or not, according to its discretion, 9 All. 721, where Edge C.J. refused to act on the presumption that the requirements of the Criminal Procedure Code, sec. 509, had been complied with.

[1] 7 All. 738, 745; Tayl. §§ 116, 555, 729.

[2] 5 Ben. 619: 1 Bom. 295: Taylor, § 178. Many other presumptions are recognised both in India and in England, such as e.g. the presumption that a debt is satisfied unless the contrary is shown by the creditor, 11 Moo. I. A. 633: the presumption that the rent due in former years has been paid, when a receipt is produced for the rent due last year (1 Suth. Civ. R. 274): the presumption as to encroachments made by a tenant (22 Suth. Civ. R. 246). As to presumptions peculiar to India, see above, pp. 835, 836.

received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL [1].

115. When one person has by his declaration [2], act [3], or omission [4], intentionally [5] caused or permitted another person to believe a thing to be true and to act upon such belief [6], Estoppel.

[1] i.e. what English lawyers call estoppel *in pais*. As to estoppel by matter of record, see supra, secs. 40-44. As to estoppels by deed in India, see 20 Suth. Civ. R. 353: 1 Ben. O. C. 37: 2 Mad. H. C. 174. Statutory estoppels by words or conduct will be found in the Contract Act, secs. 237, 245, 246.

[2] For instances of estoppel by declaration, see 14 Moo. I. A. 203: L. R., 1 I. A. 144: 24 Suth. Civ. R. 83-4: 8 Cal. 455: 1 All. 267 (agreement not to appeal): 11 Ben. 144 (relinquishment by Crown of claim to bastard's assets).

[3] For instances of estoppel by conduct, see 9 Suth. Civ. R 593-4: 10 ibid. 185: 11 Ben. Appx. 29: and many other cases of *benámi* transactions: 6 All. 24 (fraudulent sale by trustee): 1 Agra, 71 (fictitious sale to evade revenue process). A large collection will be found in Field's *Evidence*, pp. 579-586.

[4] For instances of estoppel by omission, see 3 Ben. A. C. J. 407 and 1 Bom. 314. The case of *Young* v. *Grote*, 4 Bing. 454 (where a husband left with his wife blank cheques ready signed), is a good English illustration of estoppel by negligence.

[5] 4 Cal. 787. The expression 'intentionally' was substituted for 'wilfully' in the rule stated in *Pickard* v. *Sears*, 6 A. & E. 469, and explained in *Freeman* v. *Cooke*, 2 Ex. 654, and *Cornish* v. *Abington*, 7 H. & N. 549, apparently in order to exclude from the operation of the rule cases to which it might have been applied in India if expressed in the terms used by the English Courts, 7 Mad. 8. See ibid. 110 and 2 All. 809. As to constructive fraud, 1 All. 306.

[6] The altering of his position by the person pleading estoppel is an essential part of the rule, 7 All. 515. Sec. 115 implies that no declaration, act, or omission will amount to an estoppel, unless it has caused the person whom it concerns to alter his

neither he nor his representative[1] shall be allowed, in any suit or proceeding between himself and such person or his representative[1], to deny the truth of that thing.

Illustration.

A intentionally and falsely leads *B* to believe that certain land belongs to *A*, and thereby induces *B* to buy and pay for it.

The land afterwards becomes the property of *A*, and *A* seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title[2].

Estoppel of tenant; and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy[3], a title to such immoveable property[4]; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given[5].

Estoppel of acceptor of bill of

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to

position; and to do this he must both believe in the facts stated or suggested by it, and must act upon such belief, 7 All. 878. The words 'so as to alter his previous position' seem wanted immediately after 'belief.'

[1] in interest.

[2] The section refers to a belief in a fact, not in a proposition of law, 7 Cal. 604. Petitions by a judgment-debtor to postpone an execution-sale, which contain no admission that the decree can be legally executed, do not estop him from insisting that execution is barred, L. R, 10 I. A. 119.

[3] The words 'at the beginning of the tenancy' can only apply to cases in which the tenants are put into possession of the tenancy by the person to whom they have attorned, and not to a case where the tenants have previously been in possession, 11 Cal. 523.

[4] This does not, of course, debar one who has once been a tenant from contending that his landlord's title has been lost, or that his tenancy has determined, 2 Mad. 226. The tenant should give up possession, and then if he has any title *aliunde*, that title may be tried in a suit of ejectment brought by him against his late landlord, 8 Bom. H. C., A. C. J. 175, citing *Doe* v. *Lady Smythe*, 4 M. & S. 347. Mere payments of rent do not operate as an estoppel debarring the person making the payments from questioning the right of the payee. They cannot have such effect unless the person paying was let into possession by the payee, and even then their effect as estoppel would be confined to the title of the payee at the time possession was given, 6 N. W. P. 337, per Turner J.

[5] *Doe* v. *Baytup*, 3 A. & E. 188. See as to licenses, Act V of 1882, secs. 52–64, supra, vol. I, pp. 924–927. The principle of the rule extends to persons coming into possession as mere lodgers or servants (Tayl. § 102).

endorse it[1]; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license. exchange, bailee, or licensee.

Explanation I. The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation II.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor[2].

CHAPTER IX.

OF WITNESSES.

118. All persons[3] shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years[4], extreme old age, disease, whether of body or mind, or any other cause of the same kind. Who may testify.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

[1] Taylor, § 851, and the Negotiable Instruments Act, secs. 120-122, supra, vol. I, p. 714.

[2] And in England a bailee may show that his bailor wrongfully and without notice to the bailee obtained the goods from a third person, who has claimed them from such bailee; see cases in Stephen's *Digest*, art. 105. There is no provision in the Evidence Act as to the estoppel of an agent, whose position in this respect resembles that of bailee. The Act is also silent as to the estoppel of a master signing a bill of lading (18 & 19 Vic. c. 111, sec. 3).

[3] 14 Ben. 54, 295 (children too young to understand the nature of an oath). Section 118 does not render an accused person competent to testify *on his own behalf*; see the Code of Criminal Procedure, sec. 345. But it was held in 1866 that, where there is no community of interest, he may testify for or against a co-defendant, 6 Suth. Cr. R. 91, citing *Reg.* v. *Stevenson*, Tayl. *Ev.* § 1357, note 1. See, however, 1 Bom. 618. As to whether a judge or magistrate can give evidence in a case tried by himself, see 4 Ben. App. Cr. 15: 20 Suth. Cr. R. 76: 2 Cal. 23, 405. As to examining jurors and assessors as witnesses, see the Code of Criminal Procedure, sec. 294.

[4] 14 Ben. 57.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness[1].

Husband or wife of person under criminal trial.

Judges and Magistrates.

121. No Judge[2] or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate[3]; but he may be examined as to other matters which occurred in his presence whilst he was so acting[4].

Illustrations.

(*a*) *A*, on his trial before the Court of Session, says that a deposition was improperly taken by *B*, the Magistrate. *B* cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) *A* is accused before the Court of Session of having given false evidence before *B*, a Magistrate. *B* cannot be asked what *A* said, except upon the special order of the superior Court.

(*c*) *A* is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before *B*, a Sessions Judge. *B* may be examined as to what occurred.

Communications

122. No person who is or has been[5] married, shall be

[1] The latter half of this section embodies the decision of Peacock C.J. in Ben. F. B. Appx. 11. *Secus* still in England.

[2] The word is not defined in this Act, or in Act I of 1868. But see the Penal Code, sec. 19. As to the privilege of judges in England, see *R.* v. *Gazard*, 8 C. & P. 595; Tayl. § 938.

[3] 3 All. 573.

[4] For instance, where witnesses or accused persons are foreigners, it is often important to ascertain how far they understood what was said to them or in their presence, the means (if any) taken to render depositions intelligible to the accused, and the demeanour of the witnesses. The privilege given by section 121 is the privilege of the witness, i. e. of the Judge or Magistrate of whom the question is asked. If he waives such privilege, or does not object to answer the question, it does not lie in the mouth of any other person to assert the privilege. 3 All. 573, per Straight J.

[5] i. e. the privilege continues after the marriage has been dissolved by death or divorce, see Taylor, § 910, per Lord Alvanley.

compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other[1]. during marriage.

123. No one shall be permitted to give any evidence[2] derived from unpublished official records relating to any affairs of State[3] except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit[4]. Evidence as to affairs of State.

124. No public officer[5] shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure[6]. Official communications.

125. No Magistrate or Police officer[7] shall be compelled to say whence he got any information as to the commission of any offence; and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue. Information as to commission of offences.

Explanation.—'Revenue officer' in this section means any officer employed in or about the business of any branch of the public revenue[8].

[1] In this section 'he,' 'him,' and 'his' include 'she,' 'her,' and 'her.' Act I of 1868, sec. 2, cl. (1), supra, vol. I. p. 487.

[2] oral or documentary.

[3] See *Wadeer* v. *E. I. Company*, 20 Jur. 407, and sec. 162 infra. Income-tax schedules do not come within sec. 123, *R.* v. *Yakataz Khan*, an unreported case mentioned in Mayne's *Penal Code*, p. 146.

[4] *Beatson* v. *Skene*, 5 H. & N. 838.

[5] This expression is not defined.

[6] Where the privileged communication is withheld no secondary evidence of it should be receivable.

This includes in Burma the Commandants and the seconds in command of the Military Police, Act XV of 1887, s. 13.

[7] The clause as to revenue-officers, which accords, so far as it goes, with the law of England as to penal information at the suit of the revenue, was added by Act III of 1887. But in India the Magistrates, Police officers, and Revenue officers may, if they like, say whence they got their information. *Secus* in England as to crown-witnesses. And see *Rex* v. *Hardy*, 24 Howell's S. T. 753, per Eyre C.J., and 818, per Buller J. See also *Atty. Gen.* v. *Briant*, 15 M. & W. 169. Jurors are not privileged as to what passed between them in the discharge of their duties. See in England, *Vaise* v. *Delaval*, 1 T. R. 11.

Professional communications.

126. No barrister, attorney, pleader, or vakil[1], shall at any time be permitted, unless with his client's express consent, to disclose any communication[2] made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakíl, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:.

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal[3] purpose;

(2) Any fact observed by any barrister, pleader, attorney, or vakíl, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney, or vakíl was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased[4].

Illustrations.

(*a*) *A*, a client, says to *B*, an attorney—'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) *A*, a client, says to *B*, an attorney—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) *A*, being charged with embezzlement, retains *B*, an attorney, to defend him. In the course of the proceedings, *B* observes that

[1] The privilege does not extend to mukhtárs, 1 Ben. A. Cr. J. 8.

[2] This means any *confidential or private* communication, 3 Bom. 93.

[3] *Russell* v. *Jackson*, 9 Hare, 387, 392, per Turner V.C.: *R.* v. *Cox and Railton*, 14 Q. B. D. 153.

[4] and a retainer is not necessary to constitute the relationship. The Act is silent as to a barrister's privilege as to what he said in court as such See in England, *Curry* v. *Walter*, 1 Esp. 456.

an entry has been made in *A*'s account-book, charging *A* with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by *B* in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure[1].

Sec. 126 applied to interpreters and clerks.

127. The provisions of section 126 shall apply to interpreters[2], and the clerks or servants of barristers, pleaders, attorneys, and vakíls.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, pleader, attorney, or vakíl as a witness[3], he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakíl on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others[4].

Production of title-

130. No witness who is not a party to a suit[5] shall be

[1] *Brown* v. *Foster*, 1 H & N. 736.

[2] This probably means interpreters *between barristers, etc. and their clients.* They are in England within the privilege (Tayl. § 920); and in India, where barristers and attorneys often cannot speak the language of their clients, such interpreters should certainly be prevented from disclosing professional confidence.

Medical men and clergymen are not privileged.

Officers of a corporation through whom the corporation makes statements are not privileged as such, *Mayor of Swansea* v. *Quirk*, 5 C. P. D. 106.

[3] 5 Ben. Appx. 28.

[4] This section applies where the client is interrogated, and whether he be party to the suit or not. It adopts the principle contended for in Taylor *on Evidence*, 6th ed. §§ 846, 847, but with this qualification that, if a party becomes a witness of his own accord, he shall, if the Court requires it, be made to disclose everything necessary to the true comprehension of his testimony, 4 Bom. 581, where West J. held that a case laid by the plaintiff before counsel was privileged not only as against the Court, but as against the opposite party. See in England as to such communications, *Minet* v. *Morgan*, L. R., 8 Ch. App. 361: *Mayor of Bristol* v. *Cox*, 26 Ch. Div. 678.

[5] i.e. a party to the suit in which he is called. As to witnesses who

deeds of witness not a party.

compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims [1].

Documents which another possessor could refuse to produce.

131. No one shall be compelled [2] to produce documents in his possession [3], which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Criminating answers.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will [4] criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind [5]:

Proviso.

Provided that no such answer [6], which a witness shall be compelled [7] to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except [8] a prosecution for giving false evidence by such answer.

are parties the Evidence Act is silent. The right rule was contained in the repealed Act II of 1855, sec. 22: 'A witness being a party to the suit shall not be bound to produce any document in his possession or power, which is not relevant or material to the case of the party requiring its production.' A witness is not entitled to refuse to produce a document in his possession only because its production may expose him to a civil action, or because he has a lien upon it, Stephen's *Digest*, art. 118.

[1] See Act X of 1855, sec. 9, as regards witnesses, not parties, and 5 Bom. H. C., O. C. J. 152, as regards parties.

[2] But they may be *allowed*.

[3] e.g. as an agent, attorney, trustee, or mortgagee. There is no exception where the documents are required for the purpose of identification.

[4] in the opinion of the judge?

[5] 3 Mad. H.C. Appx. xxix–xxx. The section fails to provide that a witness may be compelled to answer relevant questions, the answers to which will subject him to a civil suit or pecuniary liability. See in England, 46 Geo. III. c. 37. The provisions of the Criminal Procedure Code, secs. 161 and 175 (supra, pp. 118, 125), and those of Ben. Reg. VII of 1822, sec. 19, cl. (1), are unaffected by this section.

[6] i.e. answers to a *relevant* question. If voluntarily, or being compelled by the Court, he answers an *irrelevant* question, and the answer criminates him, he is not protected.

[7] by the Court, 3 Mad. 278.

[8] 3 Mad. H. C. Rulings, xxx, and 8 Bom. H.C., C. C. 103.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice [1].

134. No particular number of witnesses shall in any case be required for the proof of any fact [2]. Number of witnesses.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. THE order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively [3], and in the absence of any such law, by the discretion of the Court. Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. Judge to decide as to admissibility of evidence.

[1] The jury in cases tried by jury, and the Court in cases tried by assessors, may no doubt presume that an accomplice is unworthy of credit unless corroborated (sec. 114, ill. *b*); but before acting on the presumption the Court or jury is required by sec. 114 and the sequel to the illustrations to consider certain facts with the view to ascertain the possibility of the story told. The rule in sec. 133 is thus brought to coincide with the English rule that, though the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet, if the jury in the one case, or the Court in the other, credits the evidence, a conviction proceeding upon it is not illegal, 1 Mad. 395, per Morgan C.J. And see 9 All. 528, per Edge C.J. As to the desirability of corroboration see 5 Suth. Cr. 80: 4 Mad. H. C. Appx. 7: 3 Bom. H. C., C. C. 57: 6 ibid. 57.

[2] The uncorroborated evidence of a single witness, if believed, is therefore sufficient, under this Act, to convict a man of perjury or of an offence against chap. vi of the Penal Code: to authorise a magistrate to make under the Code of Criminal Procedure, c. 36, an order against the alleged father of a bastard child: to justify a judge in giving a decree in favour of the plaintiff in a suit for breach of promise of marriage, or to establish a claim on the estate of a deceased person.

[3] See the Civil Procedure Code, secs. 179, 180; and the Criminal Procedure Code, secs. 286, 287, 289, 290.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) *A* is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (*A*) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (*B*, *C* and *D*) which must be shown to exist before the fact (*A*) can be regarded as the cause or effect of the fact in issue. The Court may either permit *A* to be proved before *B*, *C* or *D* is proved, or may require proof of *B*, *C* and *D* before permitting proof of *A*.

Examination-in-chief.

137. The examination of a witness by the party who calls him[1] shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination[2].

[1] at any stage of the case.

[2] As to the object and value of cross-examination, see 6 Suth. Civ. R. 182, per Norman J.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination[1]. Re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined[2], then (if the party calling him[3] so desires) re-examined. Order of examinations.

The examination and cross-examination must relate to relevant facts[4], but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief[5].

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter[6]. Direction of re-examination.

139. A person summoned to produce a document[7] does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. Cross-examination of person called to produce a document.

140. Witnesses to character may be cross-examined and re-examined. Witnesses to character.

141. Any question suggesting the answer which the person putting it wishes or expects to receive[8], is called a leading question. Leading questions.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. When they must not be asked.

The Court shall permit leading questions as to matters

[1] This no doubt means, 'Where a witness has been cross-examined, and is then examined by the party who called him, such subsequent examination shall be called his re-examination.'

[2] 12 Moo. I. A. 380. See also the Criminal Procedure Code, sec 256.

[3] *sic.* Read 'them.'

[4] But see sec. 146 infra.

[5] 6 Ben. Appx. 88.

[6] The Court may in all cases permit a witness to be re-called either for further examination-in-chief or for further cross-examination, and if it does so the parties have the right of further cross-examination and further re-examination respectively, Stephen, *Digest*, art. 126.

[7] See the Code of Civil Procedure, sec. 164.

[8] or suggesting disputed facts as to which the witness is to testify, Stephen's *Digest*, art. 128

which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved [1].

When they may be asked.

143. Leading questions may be asked in cross-examination [2].

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object [3] to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts [4].

Illustration.

The question is, whether *A* assaulted *B*.

C deposes that he heard *A* say to *D*—'*B* wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing *A*'s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question [5], without such writing

[1] So where the questions are for the purpose of identification, or after a witness' memory has been fairly exhausted, and he does not recollect without its being refreshed (Tayl. §§ 1404, 1405).

[2] But see Taylor, § 1431, for two qualifications: (1) the question must not put into the witness' mouth the very words which he is to echo back again, and (2) the question must not assume that facts have been proved which have not been proved or that particular answers have been given contrary to the fact. The judge has no power to prohibit leading questions from being put to an adversary's witness who shows a strong interest or bias in favour of the cross-examining party. Such a power, according to Mr. Taylor, § 1431, exists in America.

[3] If the adverse party does not object to the production of inadmissible evidence the Court is bound to do so in criminal cases (Code of Criminal Procedure, sec. 256), and probably also in civil cases.

[4] See secs. 65 and 91 supra.

[5] in the suit or proceeding in which he is cross-examined. Sec. 145 applies also to a hostile witness examined by the party who calls him, sec. 154.

being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him[1].

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to[2], be asked any questions which tend

Questions lawful in cross-examination.

(1) to test his veracity[3];

(2) to discover who he is and what is his position, in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding[4], the provisions of section 132 shall apply thereto.

When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit[5], warn the witness that he is not obliged to answer it[6]. In exercising its discretion[7], the Court shall have regard to the following considerations:—

Court to decide when question shall be asked and when witness compelled to answer.

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or

[1] From the C. L. P. Act, 1854 (17 & 18 Vic. c. 128), sec. 24. Where the previous statements are merely verbal there is no similar restriction.

[2] i.e. in sec. 138, para. 2.

[3] accuracy or credibility.

[4] This probably means no more than 'relevant to a matter in issue in the suit or proceeding,' 3 Mad. 278. But if so, what is the use of section 147?

[5] This seems to mean 'may, if it does not think fit to compel him to answer the question,' 3 Mad. 278.

[6] See sec. 153 and the second proviso to sec. 165.

[7] See now in England, Order xxxv. sec. 164.

would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakíl that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(*b*) A pleader is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Procedure when question asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakíl or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakíl or attorney is subject in the exercise of his profession [1].

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions

[1] The High Court, etc. will then consider whether the case does not fall within the ninth exception to sec. 499 of the Penal Code, and be guided by the decisions in *Hodgson* v. *Scarlett*, 1 B. & Ald. 246, and *Mackay* v. *Ford*, 5 H. & N. 792.

before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him [1]; but if he answers falsely, he may afterwards be charged with giving false evidence [2].

Exclusion of evidence to contradict answers to questions testing veracity.

Exception I.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction [3].

Exception II.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted [4].

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) *A* affirms that on a certain day he saw *B* at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that *A* was on that day at Calcutta.

The evidence is admissible, not as contradicting *A* on a fact

[1] Thus, when *A* is prosecuted for committing a rape on *B*, if *B* is asked on cross-examination whether she had not illicit intercourse with other men, evidence to contradict her answer is inadmissible.

[2] The words 'but if he answers falsely he may afterwards be charged with giving false evidence' were apparently inserted in forgetfulness of the fact that the Indian law as to false evidence differs from the English law as to perjury in not requiring that the matter charged as false should have been material to the issue, supra, vol. i. p. 164.

[3] See the C. L. P. Act, 1854, sec. 25.

[4] *Attorney Gen.* v. *Hitchcock*, 16 L. J. Ex. 259.

which affects his credit, but as contradicting the alleged fact that *B* was seen on the day in question in Lahore [1].

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) *A* is asked whether his family has not had a blood-feud with the family of *B* against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party [2].

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1) By the evidence of persons who testify [3] that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted [4];

(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character [5].

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted [6], though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) *A* sues *B* for the price of goods sold and delivered to *B*.

C says that he delivered the goods to *B*.

[1] 11 Bom H. C. 169

[2] 12 Moo. I. A. 381.

[3] on oath or affirmation.

[4] cf. Act II of 1855, sec. 34, 11 Bom. 657, following 11 Bom. H C. 120.

[5] Tayl. § 363. The witness' credit can only be impeached in certain specified ways, that is, by questions or by testimony going directly to his or her credit, not mediately through a contradiction of the particular matter deposed to by him or her in the case, 11 Bom. H C 169.

[6] Tayl. §§ 1470–1473

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to *B*.

The evidence is admissible.

(*b*) *A* is indicted for the murder of *B*.

C says that *B*, when dying, declared that *A* had given *B* the wound of which he died.

Evidence is offered to show that, on a previous occasion, *C* said that the wound was not given by *A* or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies. **Questions tending to corroborate evidence of relevant fact.**

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness[1] relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved[2]. **Former statements of witness to corroborate later testimony.**

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested. **Matters provable in connexion with proved statement relevant under s. 32 or 33.**

159. A witness may, while under examination, refresh his

[1] whether written or verbal, on oath, or in ordinary conversation. A witness' account books, duly kept in the ordinary course of business, may be used under this section. And this is right, for the Natives ordinarily place great reliance on one another's books. They often say in court: 'Let the plaintiff produce his books, and I will pay.'

[2] 8 All. 672. Otherwise in England; but see Gilbert on Evidence, 6th ed. p. 135.

Refreshing memory.

memory by referring to any writing[1] made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory[2].

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document[3]: provided the Court be satisfied that there is sufficient reason for the non-production of the original[4].

An expert may refresh his memory by reference to professional treatises[5].

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document[6].

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon[7].

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power[8], bring it to Court, notwithstanding any objection which there may be to its production

[1] even though it be inadmissible in evidence, e.g. an unstamped receipt for rs. 100, notes of an investigation made by a police-officer, the report of a civil surgeon after making a *post mortem* examination, etc., 9 Cal. 455.

[2] 11 Bom. 657.

[3] The Act does not require that this copy shall have been made by the witness himself, or in his presence, or so as to enable him to swear to its accuracy.

[4] See 5 Cal. 353, where the original bonds had been burnt without any fault of the plaintiff.

[5] *Sussex Peerage Case*, 11 C. & F. 114–117.

[6] Nothing is here said as to the use of *a copy* of such document.

[7] 8 Cal. 739.

[8] According to the High Court of Bombay, a partner may be compelled in a suit to which his co-partners are not parties, to produce documents belonging to the firm, 1 Bom. 496.

or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State[1], or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter[2] disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Giving, as evidence, document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so[3].

Using, as evidence, document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce[4], he cannot afterwards use the document as evidence without the consent of the other party[5] or the order of the Court[6].

Illustration.

A sues *B* on an agreement and gives *B* notice to produce it. At the trial, *A* calls for the document and *B* refuses to produce it. *A* gives secondary evidence of its contents. *B* seeks to produce the document itself to contradict the secondary evidence given by *A*, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in

[1] How is the Court to know that the document refers to 'matters of State' (= 'affairs of State,' sec. 123)? Presumably by the oath of the witness bringing it into court, or the affidavit of the head of the department concerned. See *Beatson* v. *Skene*, 5 H. & N. 838: *Kain* v. *Farrer*, 37 L. T., N. S. 469.

[2] i. e. the translator.

[3] and if it is, or is deemed to be, relevant, *Wharam* v. *Routledge*, 5 Esp. 235: *Wilson* v. *Bowie*, 1 C. & P. 10. 'The reason for this rule,' says Mr. Taylor, § 1817, 'is that it would give an unconscionable advantage to a party to enable him to pry into the affairs of his adversary, without at the same time subjecting him to the risk of making whatever he inspects evidence for both parties.'

[4] See the Civil Proc. Code, sec. 131, supra, p. 519.

[5] *Doe* v. *Hodgson*, 12 A. & E. 135.

[6] See Taylor, § 1818.

questions or order production.

any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant[1]; and may order the production of any document or thing[2]; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question[3]:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131 both inclusive, if the question were asked or the document were called for by the adverse party[4]; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

[1] As to the use of this power, see 6 Cal. 283, where the Judge on the examination-in-chief of the witnesses for the prosecution being finished, questioned them at considerable length on the points to which he must have known that the cross-examination would certainly and properly be directed, 6 Cal. 283. Where the Judge exercises this power in a prosecution the prisoner should be allowed to cross-examine, 5 Cal. 614.

[2] in the custody or power of any witness or party or any other person. See the Code of Civil Procedure, sec. 171. See also the proviso to sec. 24 of the C. L. P. Act, 1854 (17 & 18 Vic. c. 28), with which this clause corresponds.

[3] But the Calcutta High Court has ruled that when a witness is summoned by the Court he is liable to be cross-examined by the parties, 3 Ben A. C. J. 158; and the Evidence Act, sec. 165, does not, apparently, affect this ruling.

[4] But if the judge ask questions with a view to criminal proceedings being taken against a witness the witness is not bound to answer them, 10 Bom. 185.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

No new trial for improper admission or rejection of evidence.

167. The improper admission[1] or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision[2].

[1] As to when evidence is 'improperly admitted,' see 5 Ben. Appx. 54: 5 Mad. 220: and see Bouln. 14: 6 Bom. H. C. Cr. Ca. 50.

The Judicial Committee does not determine appeals on the mere fact that certain evidence may have been improperly admitted, 13 Moo. I. A. 83.

[2] *Hughes* v. *Hughes*, 15 M. & W. 701, 704, per Alderson B. Indian illustrations of this section will be found in 1 Cal. 207: 7 Cal. 293: 6 Bom. 34: 9 All. 609. It applies to criminal as well as civil cases, 1 Cal. 217, and to trials by jury in the High Court, 9 Bom. H. C. 358.

Compare the English Order xxxix, rule 6, and the Scottish law, 13 & 14 Vic. c. 36, sec. 45; and see the Irish case, *Hodson* v. *Midland G. W. Ry. Co.*, I. R., 11 C. L. 109.

SCHEDULE.

ENACTMENTS REPEALED.

(See Section 2.)

Number and year.	*Title.*	*Extent of repeal.*
Stat. 26 Geo. III, cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic. cap. 99.	To amend the Law of Evidence	Section 11, and so much of section 19 as relates to British India.
Act XV of 1852	To amend the Law of Evidence	So much as has not been heretofore repealed.
Act XIX of 1853	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II of 1855	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861.	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
Act I of 1868 ...	The General Clauses Act, 1868.	Sections 7 and 8.

APPENDIX.

ACT NO. X OF 1873.

(*Received the Governor-General's Assent on the 8th April, 1873.*)

AN ACT TO CONSOLIDATE THE LAW RELATING TO JUDICIAL OATHS, AND FOR OTHER PURPOSES.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:— Preamble.

I.—*Preliminary.*

1. This Act may be called 'The Indian Oaths Act, 1873.' Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty. Local extent.

[*Repealed by Act XII of* 1876.] Commencement.

2. [*Repealed by Act XII of* 1873.] Repeals.

3. Nothing herein contained applies to proceedings before Courts-martial, or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has not power to repeal. Saving of certain oaths and affirmations.

II.—*Authority to administer Oaths and Affirmations.*

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:— Authority to administer oaths and affirmations.

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence;

(*b*) the Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—*Persons by whom Oaths or Affirmations must be made.*

5. Oaths or affirmations shall be made by the following persons:— Oaths or affirmations to be made by witnesses;

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before

any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

interpreters; (b) interpreters of questions put to, and evidence given by, witnesses; and

jurors; (c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindú or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—*Forms of Oaths and Affirmations.*

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed or return it to the Court. Administration of oath if accepted.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated[1]. Evidence conclusive as against person offering to be bound.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal[2]. Procedure in case of refusal to make oath.

V.—*Miscellaneous.*

13. No omission[3] to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place[4], or shall affect the obligation of a witness to state the truth. Proceedings not invalidated by omission of oath or irregularity.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject[5]. Witnesses bound to state the truth.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word 'oath' the words 'or affirmation' were inserted. Amendment of Act XLV of 1860, ss. 178, 181.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath or to make or subscribe any affirmation or declaration whatever. Official oaths abolished.

[1] 2 Mad. 356: 22 Suth. Civ. R. 387.

[2] 2 C. L. R. 476.

[3] whether it be or be not accidental or negligent, 14 Ben. 54, 294. As to omitting to swear the jury in a sessions case, see 20 Suth. Cr. 19.

[4] 21 Suth. Cr. 31.

[5] Compare Act XLV of 1860, section 191.

INTRODUCTION TO THE LIMITATION ACT.

THE objects of the Indian Limitation Act, 1877, are two: first, to limit the time at the expiration of which a civil right cannot be enforced; secondly, to prescribe the length of user by which a right to property may be acquired. The law is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence, and to prevent oppression[1]. Useful in Europe and America, it is still more needed in India, where, from climatic and other causes, documentary evidence of title perishes with unusual rapidity. The law of Limitation, as affecting the form of the remedy, comes under the head of adjective law. The law of Prescription, as affecting the substance of the right itself, comes under the department of substantive law; and when, if ever, the Indian statute-book is re-arranged on a scientific basis, section 28 of the Limitation Act will take its place among the laws contained in the first volume of this work.

Native rules of limitation: The Hindú law contains several texts relating to limitation and prescription, which will be found in Colebrooke's Digest, vol. i. p. 190, and Upendra Nath Mitra's Law of Limitation and Prescription, pp. 19–27. The Muhammadans[2], like the Jews[3], seem to have had no law of limitation or prescription. But to the Indian lawyer these matters are now of merely antiquarian interest, the vague and imperfect Native rules having long since been superseded by English statutes or Anglo-Indian Regulations and Acts.

Of these Regulations, the first was the Bengal Reg. III of 1793, sec. 14, under which, as a rule, all suits must be brought within twelve years of the time at which the cause of action arose.

Limitation law of Bengal. Ben. Reg. II of 1805 fixed sixty years as the period of limitation in respect of suits by Government. It also dealt with suits for immoveable property, suits for penalties, and summary suits for arrears of rent. It declared that, as a rule, no length of time should bar a suit for the recovery of property mortgaged or deposited.

Ben. Reg. II of 1819, sec. 24, fixed one year as the time within which suits to contest certain decisions of the Board of Revenue in lákhiráj cases must be instituted.

[1] Story's *Conflict of Laws*, sec. 576. Bühler's *Laws of Manu*, viii. 145–149. 'The object of the legislature in passing them [statutes of limitation] is to quiet long possession and to extinguish stale demands,' 13 Ben. 182.

[2] Macnaughten's *Principles and Precedents of Mohammedan Law*, ed. Sloan, xii. sec. 1.

[3] Angell, *On the Limitation of Actions*, sec. 8: Leviticus, xxv. 20.

Ben. Reg. V of 1831, sec. 5, extended to the Courts of Munsifs the limitation-rules in force in the District Courts.

Ben. Reg. VIII of 1831, sec. 6, prescribed a period of one year to regular suits for contesting the summary awards of the Revenue authorities in matters connected with rent.

Act IV of 1840, secs. 4 and 6, provided a limitation for complaints of dispossession of lands, etc.

Acts I of 1845, sec. 24, and XI of 1859, sec. 33, prescribed a limit of one year to suits to set aside sales for arrears of revenue.

Acts XIII of 1848 fixed a period of three years for suits to contest certain awards made by the Revenue authorities.

Appeals. As to appeals, limitation-rules were prescribed by Ben. Reg. VII of 1832, sec. 2, and by Act XXV of 1837, sec. 9. As to applications, the only rules were those in Ben. Reg. VI of 1813, sec. 3, which prescribed a period of six months for summary applications for execution of awards, and Act XIX of 1841, sec. 14, which fixed a like period for applications to the judge in cases of disputed succession, and Act XVI of 1845, which fixed a period of three months for applications to readmit a dismissed appeal.

Applications.

Execution of decrees. The Regulations contained no rule as to applications for the execution of decrees; but the twelve years' limitation was adopted in the Bengal mufassal by analogy to the general law for the trial of suits; and such applications might, under slight restrictions, be renewed every twelve years[1]. There seems to have been no such rule in the Madras or the Bombay mufassal.

Limitation law of Madras. In the Madras Presidency, Mad. Reg. II of 1802, sec. 18, prescribed a rule substantially the same as that laid down by Ben. Reg. III of 1793, sec. 14. But exceptions were made in the case of claims founded on certain bonds, and also on mortgages, 'the period for rendering which obsolete and unactionable is to be determined by the laws of the country,' which, probably, meant local usage. No time was fixed for suits by Government. As to appeals, limitation-rules were prescribed by Mad. Regs. IV of 1802, sec. 12, V of 1802, sec. 10, XII of 1802, sec. 10, XV of 1816, sec. 5, VI of 1828, secs. 3 and 4, and by Acts XXXV of 1837, sec. 3, VII of 1843, secs. 8 and 9. The only limitation-rule as to applications was that contained in Act XVI of 1845, which prescribed a period of three months for applications to readmit a dismissed appeal.

Limitation law of Bombay. The limitation-law in Bombay was more elaborate. Bom. Reg. V of 1827, secs. 1–4, 7 and 8 contained the Bombay rules on this subject of limitation of suits. Suits for damages on account of

[1] Decisions of the Sadr Díwání Adálat, 1858, pp. 1341 and 1580, cited by Upendra Nath Mitra, p. 60.

injury to the person and reputation, and for the recovery of the privileges of caste, were limited to twelve months (sec. 2). Suits for debts not founded upon or supported by writing, and for damages other than those above specified, were limited to six years (sec. 3). Suits for the recovery of immoveable property and hereditary offices were barred after thirty years (sec. 1), and all other suits after twelve years (sec. 4). Where the possession of immoveable property had been acquired by fraud, the period of limitation was extended to sixty years (sec. 1).

There was no limitation for suits to recover mortgaged property, unless where it had been held for more than thirty years 'by a *bona fide* possessor as proprietor' (sec. 8). There were rules as to the effect of oral and written admissions by the defendant (sec. 7, cl. 1), and of proceedings in court or before an arbitrator (sec. 7, cl. 2). The claimant's minority or insanity was also provided for (sec. 7, cl. 3).

For suits before Collectors provision was made by Bom. Reg. XVII of 1827, sec. 31.

No period of limitation was prescribed for suits by Government.

For appeals, limitation-rules were provided by Bom. Regs. IV of 1827, secs. 73 and 99, and VII of 1827, sec. 10, and VII of 1831, secs. 3 and 4. For applications to replace suits struck off the file, a rule was prescribed in Bom. Reg. IV of 1827, sec. 21.

As to prescription, *bona fide* possession 'as proprietor' of land etc for more than thirty years conferred a right of property therein (secs. 1 and 8).

The Non-regulation Provinces.

These Regulations did not apply to the Non-regulation Provinces, such as the Panjáb and Oudh. The so-called Panjáb Civil Code, part 2, sec. 1, clauses 6–10, contained some limitation-rules, which were modified by various letters from the Government of India and circulars of the Judicial Commissioner[1]. In Oudh I believe that certain circular orders of the Judicial Commissioner were enforced, until Act XIV of 1859 was extended to that province by the Executive Government.

The Presidency towns.

The Supreme Courts in the three Presidency towns adopted the English law of limitation as contained in the 21 Jac. I, c. 16, and 4 Anne, c. 16, and such adoption was recognised by the Judicial Committee in the *East India Company* v. *Oditchurn Paul*[2] and in *Ruckmaboye* v. *Lulloobhoy Mottichund*[3]. The Supreme Courts at Calcutta and Bombay, after some hesitation, decided that the English law of limitation, as being part of the *lex fori*, was

[1] See Barkley's *Non-regulation Law of the Panjab*, Lahore 1871, pp. 115, 116.

[2] 5 Moore, I. A. 43.

[3] 5 Moore, I. A. 234.

applicable to Hindú suitors in those Courts; and the Judicial Committee affirmed these decisions. The English statute 9 Geo. IV, c. 14, was extended to India by Act XIV of 1840; but 2 & 3 Will. IV, c. 71, as to the acquisition of easements by prescription; 3 & 4 Will. IV, c. 27, for the limitation of actions relating to real property; and 3 & 4 Will. IV, c. 42, providing limitations for actions on specialties, were never extended to India.

Act XIV of 1859.

It will thus be seen that, neglecting the rules in force in Oudh and the Panjáb, four different systems of limitation-laws were in force in British India down to 1859. In that year a Bill, which had been framed in 1842 by the Indian Law Commissioners, was passed (with some amendments by Sir James Colvile and Sir Barnes Peacock) as Act XIV of 1859. It provided one uniform law of limitation for all the Courts in British India, except as to proceedings for the execution of decrees in the three Supreme Courts, certain suits by mortgagees in those Courts, and suits for public claims under Ben. Reg. II of 1805. A period of twelve years was fixed for suits relating to immoveable property, specialties governed by English law, and legacies: six years for other personal demands: three years for suits for money lent, for breaches of unregistered contracts, for rent, for hire and for the recovery of property comprised in certain possessory awards: one year for suits for pre-emption, for penalties, for injury not affecting immoveable property, for wages, and for setting aside public sales and summary orders. The period in the case of many of these suits, and of all suits not expressly provided for, was declared to run 'from the time the cause of action arose.' The grounds of exception to the ordinary rules were declared to be; (1) the plaintiff's legal disability, including minority, idiocy, lunacy, and in cases governed by English law, coverture; (2) ineffectual proceedings *bona fide* taken by the plaintiff in a Court without jurisdiction; (3) the defendant's absence from British India; (4) written acknowledgments of liability to pay a debt or legacy, signed by the defendant; (5) concealed fraud of the defendant; (6) the relation of trustee and beneficiary. The Act also rendered verbal acknowledgments of liability or payments by the debtor ineffectual to keep alive or revive the debt.

Sir James Colvile proposed to enact specific rules for the acquisition and extinction of rights by prescription: but the Act of 1859 provided for the limitation of suits only, and as such left untouched the rule of prescription contained in Bom. Reg. V of 1827, secs. 1 and 8.

Defects of Act XIV of 1859.

Notwithstanding the ability and learning of the framers of Act XIV of 1859, the Judicial Committee of the Privy Council

characterised it as an 'inartificially drawn statute[1].' This description is justified by the great number of the reported decisions on the Act during its short life of ten years. On considering these cases, which had been carefully collected and discussed by Mr. Ninian Thomson[2], a judge of the Court of Small Causes at Calcutta, it seemed to the writer (then secretary to the Government of India in the legislative department) that, apart from the defects of drafting above referred to, the bulk of the litigation on the Act was occasioned by the absence of any specific declaration as to when in each case the fixed period of limitation should be deemed to commence.

The Act of 1859 in many places[3] declared that the period of limitation was to run from the time when the 'cause of action arose.' But 'cause of action' is an ambiguous term. It is often, even to professional lawyers and trained judges, difficult to determine at what precise period in a transaction the cause of action does arise, and most of the difficulties connected with statutes of limitation in England and in India have been produced by the necessity of answering this question. Take as illustrations the simple cases of a promissory note payable with interest on demand, or by instalments, or given by the maker to a third person to be delivered to the payee after a certain event should happen. When, in each of these cases, does the cause of action arise in favour of the payee? When does the cause of action arise on a dishonoured foreign bill when protest has been made and notice given? When does it arise in the case of the acceptor of an accommodation bill as against the drawer? It occurred to me therefore that the best way of framing a Limitation Act likely to be practically useful in India would be to throw the bulk of it into a tricolumnar schedule, specifying in the first column the commonest suits, appeals and applications: in the second, the period of limitation appropriate to each of these proceedings; and in the third, the specific date from which the time is to begin to run, which, in the case of a suit, would generally, though not necessarily[4], be identical with the time when the cause of action arose. The body of the Act was to contain the necessary rules as to dismissing time-barred suits, legal disability and computing periods of limitation. It was also (but this was an after-thought) to contain rules as to the acquisition of prescriptive titles to easements, etc., as to which,

[1] *Delhi and London Bank* v. *Orchard*, 3 Cal. 47, 57, and see 21 Suth. P. C. 178.

[2] *Act XIV of* 1859 *regulating the Limitation of Civil Suits in British India*, 2nd ed., Calcutta 1870.

[3] Act XIV of 1859, sec. 1, clauses 2, 8, 11, 12, 16.

[4] See, for example, art. 48, where time begins to run when the plaintiff learns his loss, though the cause of action arises when the loss occurred.

except in Bombay, there was nothing but some vague and inconsistent judge-made law[1]. Mr., now Sir James, Stephen, then law-member of the Governor General's Council, approved of the idea; and I thereupon, with the aid of the Indian cases collected by Mr. Thomson and the English cases collected by Messrs. Darby and Bosanquet, drew the Bill which afterwards became Act IX of 1871.

The following are the principal amendments made by this Act:

a. The Courts are required to give effect to the law, whether the defence of limitation be pleaded or not.

b. An extension of time is allowed when the period of limitation expires on a day when the Court is closed.

c. The limitation-clauses of several special laws are repealed and re-enacted. All other such clauses are expressly saved from the general Act.

d. Express provision is made for co-existing or double disabilities.

e. In suits on foreign contracts the *lex fori* is to be preferred to the limitation law of the country where the contract was entered into. Such law, however, may be pleaded when it has extinguished the contract, and the parties were domiciled in such country during the prescribed period.

f. In computing the period of limitation, the day on which the right to sue accrued is to be excluded.

g. The time during which the commencement of a suit has been stayed by injunction is to be excluded[2].

h. Except in the case of suits for the possession of land and hereditary offices, a right to sue is not to accrue unless there is at the time a person in existence capable of suing, as also a person in existence capable of being sued.

i. Acknowledgments must be made before the expiry of the period of limitation. The terms of a lost written acknowledgment may not be proved by parol evidence[3].

j. The effect of substituting or adding a new plaintiff or defendant is declared.

k. The English rule of computing time when there are successive breaches of contract, a continuing breach or a continuing nuisance, is adopted.

l. The rule in *Backhouse* v. *Bonomi*[4] as to suits for com-

[1] See Mr. Stephen's speech, Abstract of Proceedings of the Council of the Governor-General of India, 24 March, 1871, p. 346.

[2] This rule was taken from the New York Code, sec. 589.

[3] Otherwise in England, see *Haydon* v. *Williams*, 7 Bing. 163.

[4] 9 H. L. 503. See *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Ca. 127.

pensation for an act which becomes actionable in case it causes damage, is declared (sec. 25).

m. All instruments are for the purposes of the Act to be deemed to be made with reference to the Gregorian calendar.

n. Rules for the acquisition of easements by positive prescription (analogous to those contained in 2 & 3 Will. IV, c. 71) are contained in secs. 5, 27, 28.

o. An express rule of extinctive prescription, resembling that in 3 & 4 Will. IV, c. 27, sec. 34, is applied to lands and hereditary offices.

p. An application to execute a decree within the limited time keeps alive the decree, and a new period is allowed from the date of the application or the issue of a notice to the judgment-debtor.

q. The time allowed for the execution of a decree or order of which a certified copy has been registered is extended to six years.

r. To suits by Government the sixty years limitation is applied in all the Courts and in all the Presidencies.

Act IX of 1871 greatly diminished litigation of the kind above referred to, and in other respects was, on the whole, a successful measure. But during the six years that it was in operation several amendments occurred to Mr. Hobhouse (Mr. Stephen's successor) and myself, and some valuable suggestions as to the third column of schedule II were made by Sir Richard Garth, then Chief Justice of Bengal. Moreover, a new Civil Procedure Code had been drafted, which would alter the periods of time provided for making divers applications to the Courts, create certain new applications, and thus render the Limitation Act of 1871 to some extent incorrect and incomplete.

Act XV of 1877.

Under these circumstances, I prepared a new draft, which was settled by Sir Arthur Hobhouse, and introduced by him into the Governor-General's Council on 21 February, 1877. It was passed (as Act XV of 1877) after Sir Arthur Hobhouse had left India, and it came into force on the 1st October 1877, contemporaneously with the Civil Procedure Code of that year.

The following are the principal amendments made by the Limitation Act of 1877.

a. Successive or supervenient disabilities[1], as well as the disability of legal representatives, have been provided for.

b. Suits to enforce rights of pre-emption have been excluded from the operation of the exceptions as to legal disabilities and the non-existence of a legal representative capable of suing and being sued (secs. 7, 17). This was done on the recommendation

[1] as, for example, when the person having a right to sue is a minor and before he attains majority becomes insane.

of Sayyid Mahmúd, now on the bench of the High Court at Allahabad, who said that, under Muhammadan law, it was very doubtful whether the right of pre-emption was ever intended to be conferred on persons suffering from legal disability.

c. A purchaser for valuable consideration from an express trustee, whether he had or had not notice of the trust at the time of the purchase, is protected by twelve years' possession (sec. 10). Here the Indian agrees with the English law as altered by 37 & 38 Vic. c. 57.

d. The time of a defendant's absence from British India is excluded in computing the period of limitation, whether a summons could or could not be served upon him during such absence (sec. 13). Here the Indian Act agrees with the English law as to persons absent beyond seas (4 Anne, c. 16, sec. 19).

e. A written acknowledgment in respect of any matter of right gives a fresh starting-point[1].

f. The effect of a part-payment has been extended to all debts, whether arising out of a contract in writing or not (sec. 20). Joint contractors and joint mortgagors, as well as several partners or executors, are freed from liability by reason only of an acknowledgment or payment made by one of them (sec. 21). This is in accord with 19 & 20 Vic. c. 57, sec. 14, and 3 & 4 Wm. IV, c. 27, sec. 28.

g. The right to sue is renewed from day to day in the case of all continuing wrongs, not merely in the case of a continuing nuisance (sec. 23).

h. The rules as to the estate of Hindú widows and Hindú managers of joint estates are extended to Muhammadans where they have adopted, or, in the case of Hindú converts to Islám, have retained, the Hindú law of property, schedule II, arts. 107, 125, 141. In the greater part of the Panjáb, Muhammadan widows succeed to their husbands' lands where there are no sons or descendants in the male line, and they hold such lands for life or till they marry again, exactly in the same way as Hindú widows succeed. Suits to set aside alienations made by Muhammadan widows or to have them declared void, except for the life, or till the remarriage, of the widow, are quite as numerous in the Panjáb as suits to set aside alienations made by Hindú widows[2].

[1] Under the Acts of 1859 and 1781 acknowledgments were effectual in respect of debts and legacies only.

[2] Mr. J. W. Smyth, cited in the Abstract of Proceedings of the Council of the Governor-General, Calcutta, 1878, p. 468. These facts, coupled with the existence of the undivided family system among the Muhammadans of the Lower Provinces of Bengal, shows how cautious we should be in assuming that the profession of Islám involves the adoption of the Muhammadan law of property.

i. As to appeals and applications, the Act has been extended to appeals from, and applications to review, decrees and orders of the High Courts in the exercise of their original jurisdiction, schedule II, arts. 151, 162. These appeals had been formerly regulated by rules made under the Charters of 1865, rules which were insufficient and needlessly different.

j. The exceptions on account of legal disability, ineffectual but *bona fide* proceedings in a Court without jurisdiction, concealed fraud, written acknowledgments, and the non-existence of a person capable of suing or being sued, have been extended to applications (secs. 7, 14, 17, 18, 19).

k. The starting-point of limitation has been altered in the following cases; suits to enforce a right of pre-emption, schedule II, no. 10, where, in the case of reversionary interests, rights to redeem etc., time now runs from the registration of the sale-deed; the suits referred to in arts. 32, 48, 90, 91, 92, 114, 118, 127, in which the plaintiff's knowledge of certain facts is now made an ingredient of his cause of action; suits for money payable on demand, arts. 59, 73, where the time now runs in India, as in England[1], from the date of the transaction instead of from the demand[2]: suits for redemption, art. 148; and suits in the mufassal, by mortgagees for possession of mortgaged immoveable property, art. 135. The period of limitation has been lengthened in arts. 37, 38, 40, 48, and shortened in arts. 118, 119, 146.

Amendments of Act XV of 1877.

The amendments of Act XV of 1877 have been few and slight. They were made by Acts XII of 1879, sec. 108, VIII of 1880, V of 1881 (sec. 156), IX of 1887, and VII of 1888, and will be found in their proper places. But Act XV of 1877 requires several other amendments. 'Time,' said Lord Plunket, speaking of the law of prescription,—'Time holds in one hand a scythe, in the other an hour-glass. The scythe mows down the evidence of our rights, the hour-glass measures the period which renders that evidence superfluous.' The great orator, had he been familiar with Indian legislation, might have rendered his metaphor complete by adding that the frame-work of the hour-glass would certainly decay, the glass be broken, and the sand escape.

Further amendments suggested.

In the present instance, the terms 'possession' (arts. 3, 47, 48, 49, 134–142[3]), 'actual possession' (art. 10), 'adverse possession,' 'dis-

[1] *Norton* v. *Ellam*, 2 M. & W. 461.

[2] As to the former law see 6 Ben. 160, where Jackson J. followed Austin *on Jurisprudence*, 1863, ii. 156, 157.

[3] As to evidence of possession of uncultivated land, see 3 Suth. Civ. R. 73, per Peacock C.J.: 3 Cal. 768: 7 Cal. 230. That possession is not disturbed by trespass or diluviation see 6 Cal. 735. As to juridical possession, 7 Bom. A. C. 82.

possession,' and 'discontinuance of possession,' which occur in schedule II, articles 124, 142, 144, should be defined.

So also 'debt' (in sec. 20) should be defined so as to exclude unliquidated damages and money which will become due only on the happening of a future uncertain event[1], and 'paid' should be defined so as to exclude involuntary payments as, for instance, by means of an execution-sale of the defendant's property. The expression 'continuing breach of contract' in sec. 23 has also given rise to difficulty and should be explained. So 'accounts stated' (art. 64) should either be defined or be replaced by some less technical expression. Definitions.

It should also be expressly declared that the English rule of strict interpretation is inapplicable to the Act. 'Statutes of limitation,' said the Judicial Committee, reversing a decision of the Calcutta High Court[2], 'like all others, ought to receive such a construction as the language in its plain meaning imports. They are in their nature strict and inflexible enactments. The object of the legislature in passing them is to quiet long possession and to extinguish stale demands.' But this decision has apparently been overlooked, and the opposite doctrine has been maintained, not only by the Calcutta High Court itself[3], but also by the High Courts of Madras[4] and Bombay[5]. The rule of strict construction.

For the purposes of schedule II, arts. 32, 48, 90, 91, 92, 94, 95, 96, 113, 114, 118 and 127, it should be declared that wilful ignorance is equivalent to, or carries with it the consequences of, knowledge[6]. It should also be declared that persons cannot by agreement withdraw themselves from the operation of the Act[7]. Wilful ignorance.

The following applications should be expressly excluded from the operation of the Act: applications for certificates under Acts XXVII of 1860 and XL of 1858; applications for probate or letters or certificates of administration; applications which the Court has no discretion to refuse; applications for the exercise of functions of a ministerial character. It should also be declared that the provisions as to applications extend to Government. Applications.

So much for desirable additions to the preliminary part of the Act. To section 7 a clause should be added fixing a certain period (say eighteen years[8]) after which limitation should not be suspended by any disability.

[1] 3 Mad. H. C. 311.

[2] 13 Ben. 177, 182. So also the High Court of the N. W. Provinces, 8 All. 483.

[3] 9 Cal. 232-233.

[4] 5 Mad. 144.

[5] 1 Bom. 22: 9 Bom. H C. 111-112.

[6] 4 Suth. S. C. C. Ref. 19: 9 Suth. Civ. R. 329: 11 ibid. 163.

[7] 4 Ben. F. B. 103: 8 All. 483-484; but see 5 Moore, I. A. 44.

[8] Compare 3 & 4 Wm. IV, c. 27, sec. 17 (40 years), and 37 & 38 Vic. c. 37, sec. 5 (30 years). Eighteen years was the limit proposed by Sir James Colvile.

Section 11 should be extended to all obligations, not merely to those arising from contract.

In section 13 provision should be made for the case of several defendants, one of whom only has been absent from British India during the currency of the period of limitation.

Sections 13 and 16 should provide (as is done by secs. 14 and 15) that the day on which the state of things causing the suspension of limitation begins to exist, as well as the day on which it ceases to exist, should be counted among the days to be excluded in the plaintiff's favour[1].

Section 19 should provide for the case of an acknowledgment or payment made in favour of a person under disability, or by a person absent from British India.

Section 20 should declare the effect of part-payment of principal on the claim for interest: in the second clause the words 'as such' should be inserted after 'paid'; and the last clause should expressly provide for the receipt by the mortgagee of rent of mortgaged land[2].

Section 28 should be expressly confined to corporeal property, and there should be an exception as to suits under schedule II, art. 3. Furthermore, words should be added showing distinctly that the legislature intend that the extinction of the right of the dispossessed owner shall involve the creation of a right of the person in possession when the period of limitation expires[3]. And there should be a clause providing for the case of a succession of independent trespassers, each for less, though in the aggregate for more, than the full period[4].

As to the second schedule, the suits mentioned in its first division might in some instances be grouped more conveniently. Art. 40 should be extended to suits for an account of the profits obtained by infringing a copyright or patent. Art. 43 should be made to apply expressly to suits under the Probate and Administration Act, 1881, secs. 139, 140. Art. 44 should be extended to mortgages and leases. The starting-point fixed by art. 78 should be altered, and the wording of arts. 121, 132 should be made more precise. There should be special articles for the following suits: on a guarantee[5]: for arrears of interest due on money charged upon land[6]: for wrongful conversion by a bailee[7]:

[1] Shephard's *Law of Limitation in India*, 2nd ed., p. 22.

[2] 2 Mad. 165.

[3] See in Bengal, 8 Ben. 540: 20 Suth. Civ. R. 104: 3 Cal. 224; and in England, *Nepean* v. *Doe*, 2 Smith, L. C. 9th ed. 610.

[4] See *Dixon* v. *Gayfere*, 17 Beav. 421, and *Asher* v. *Whitlock*, L. R., 1 Q. B. 1.

[5] *Colvin* v. *Buckle*, 8 M. & W. 680.

[6] 3 & 4 Will. IV, c. 27, sec. 42.

[7] *Wilkinson* v. *Verity*, L. R., 6 C. P. 206.

for the possession of lands sold by the defendant to the plaintiff[1]: by the vendor of land for the purchase-money: on the quasi-contracts mentioned in the Contract Act, secs. 68–72. On the other hand, art. 65 should be omitted as covered by arts. 115, 116. In the third division, art. 179 should be provided with an explanation or illustrations founded on the numerous decisions of the High Courts on the words 'to take some step in aid of execution,' which have sometimes been construed in a singular manner[2].

Special and local limitation rules as to suits.

Some of the limitation-rules relating to civil suits, and contained in special and in local laws, might be repealed and inserted in the general Act[3]. The following is a list of the chief of these rules relating to suits: those relating to appeals and applications are too numerous to be here stated[4].

SPECIAL LAWS.

(*a*) *Six years.*

Government of India (33 Geo. III, c. 52, sec. 141).
Unclaimed prize-money (31 & 32 Vic. c. 38, sec. 4).

(*b*) *Five years.*

Government of India (21 Geo. III, c. 70, sec. 7).

(*c*) *Three years.*

Claims to waste lands (XXIII of 1863, sec. 18).
Government of India (53 Geo. III, c. 155, sec. 124.)

(*d*) *Two years.*

Patents (XV of 1859, sec. 53)[5].

(*e*) *One year.*

Army (44 & 45 Vic. c. 58, sec. 170).
Claims to property seized as forfeited (IX of 1859, sec. 20).

(*f*) *Six months.*

Foreign jurisdiction (41 & 42 Vict. c. 67, sec. 8).
Specific relief (I of 1877, sec. 9).
Wrongful possession in case of succession (XIX of 1841, sec. 14).

[1] Here time would run from the moment that the ownership passed to the purchaser: see the Transfer of Property Act, sec. 54 (supra, vol. I. p. 768).

[2] They have, for instance, been held to include an application praying that execution-proceedings may be struck off the file (3 All. 320), and an application praying for the postponement of an execution-sale already advertised (3 All. 757).

[3] For example, the insertion of an article in the first division of the second schedule, relating to certain suits against municipal corporations and their officers, would rid the statute book of at least nine enactments.

[4] A guide to those in force at the end of 1882 will be found in Agnew's *Index to the Enactments relating to India*, Calcutta, 1883.

[5] Repealed from 1st July, 1888, by the Inventions and Designs Act, V of 1888.

(*g*) *Three months.*

Land Acquisition (X of 1870, sec. 58).
Police (V of 1861, sec. 42).

(*h*) *Two months.*

Forests (VII of 1878, sec. 47).

(*i*) *Thirty days.*

Registration (III of 1877, sec. 77).

LOCAL LAWS.

(*a*) *Twelve years.*

Local limitation-rules as to suits.

Mad. Reg. IV of 1816, sec. 5 (Village munsifs).
Mad. Reg. V of 1816, sec. 2 (3) (Village pancháyats).
XXIII of 1881, sec. 17 (Dekkhan Raiyats' relief).

(*b*) *Six years.*

XXIII of 1881, sec. 17 (Dekkhan Raiyats' Relief).

(*c*) *Three years.*

III of 1884, sec. 2 (Madras: Recovery of compensation from co-sharer).

Bom. Act III of 1876, sec. 21 (Mámlatdár's Court).

Ben. Act I of 1879, sec. 44 (Landlord and tenant, Chutiá Nágpur).

Reg. III of 1872, sec. 25 (Sonthál Parganas settlement).

VIII of 1885, sec. 184, and sched. III (Recovery of arrears of rent).

Reg. I of 1872, sec. 13, rule 64 (Panjáb Frontier).

XVIII of 1881, sec. 118 (Land revenue, Central Provinces).

(*d*) *Two years.*

XIX of 1852, sec. 13 (Ábkárí, Madras Town).

VIII of 1885, sec. 184 and sched. III (Recovery of possession by occupancy raiyat).

IX of 1883, sec. 21 (Central Provinces, Recovery of possession by tenant).

(*e*) *One year.*

Bom. Act V of 1879, sec. 135 (Land-revenue Code).

Ben. Reg. II of 1819, sec. 24 (Resumption of revenue).

Ben. Reg. VII of 1822, sec. 20 (3), (Settlement).

XXXII of 1855, sec. 7 (1) (Embankments, Lower Provinces).

Ben. Act I of 1879, secs. 42, 75, 87, 121, 122, 126 (Landlord and Tenant, Chutiá Nágpur).

VIII of 1885, sec. 184, sched. III (Lower Provinces, Ejectment of tenure-holder or raiyat).

(*f*) *Six months.*

XII of 1851, sec. 17 (Land Revenue, Madras Town).

Mad. Act II of 1864, sec. 59 (Recovery of arrears of revenue).

„ VI of 1867, sec. 31 (Land revenue, Madras Town).

„ III of 1871, sec. 168 (Improvement of Towns).

„ VI of 1871, sec. 42) (Excise on salt).

„ I of 1884, sec. 433 (Madras Town, Municipal Act).

„ I of 1886, sec. 72 (Ábkárí).

Bom. Act VII of 1873, sec. 62 (salt).

„ VI of 1879, sec. 87 (Bombay Port-trust).

VIII of 1885, sec. 184, sched. III (Lower Provinces, Recovery of arrears of rent).

XV of 1879, sec. 52 (Rangoon Port Commissioners).

(*g*) *Four months.*

Bom. Act V of 1878, sec. 67 (Ábkárí).

(*h*) *Three months.*

Mad. Reg. IV of 1816, sec. 35 (1) (Village munsifs).

„ V of 1816, sec. 18 (1) Village pancháyats).

„ III of 1832, sec. 2 (Complaints under Mad. Reg. IX of 1822, sec. 16).

„ XIX of 1852, sec. 38 (Madras Town, Ábkárí).

Mad. Act VIII of 1867, sec. 75 (Madras Town Police).

„ I of 1870, sec. 28 (Canal Tolls and Ferries).

XLVIII of 1860, sec. 29 (Bombay Town, Police).

Bom. Act III of 1872, sec. 287 (Bombay municipality).

„ VI of 1873, sec. 86 (Mufassal municipalities).

XXXII of 1855, sec 7 (11) (Lower Provinces, Embankments).

Ben. Act VII of 1864, sec. 41 (Salt).

„ IV of 1866, sec. 99 (Calcutta Police).

„ V of 1870, sec. 87 (Calcutta Port Improvement).

„ IV of 1871, sec. 36 (Sanitation of Puri).

„ IX of 1871, sec. 17 (Huglí bridge).

„ IV of 1876, sec. 357 (Calcutta municipality).

„ III of 1884, sec. 363 (Mufassal municipalities).

„ XII of 1881, sec. 94 (N. W. Provinces, Rent).

„ VII of 1874, sec. 40 (Burma Municipalities).

Reg. II of 1877, secs. 49, 51 (Ajmer Land and Revenue).

(*i*) *Two months.*

XXVIII of 1860, sec. 25 (Madras, Boundary marks.

Ben. Reg. VIII of 1819, sec. 17 (5) (Patní Ta'luqs).
II of 1876, sec. 10 (Burma, Land and Revenue).
XIX of 1881, sec. 48 (Burma, Forests).

(*j*) *One month.*

Mad. Act VIII of 1865, secs. 40, 44 (Rent).
XV of 1873, sec. 43 (N. W. P. and Oudh Municipalities).
IV of 1873, sec. 19 (Panjáb municipalities).

(*k*) *Thirty days*

Mad. Act VIII of 1865, secs. 18, 51 (Rent).

So much for civil suits. Although it may be inexpedient in India to provide a general law of limitation for criminal prosecutions, the statute-book might be much shortened by inserting in the second schedule to Act XV of 1877 articles condensing the enactments specified in pp. 15 and 61 supra, which provide limitation-rules for prosecutions under the laws relating respectively to municipalities, police, excise and salt.

We may conclude by quoting two remarks of the Judicial Committee in *Ruckmaboy* v. *Lulloobhoy*: 'It has become almost an axiom in jurisprudence that a law of limitation is a law relating to procedure, having reference only to the *lex fori*.' 'While the Courts of almost all civilised countries entertain causes of action which have originated in a foreign country, and adjudicate upon them according to the law of the country in which they arose, yet such Courts respectively proceed according to the prescription of the country in which it exercises its jurisdiction[1].' This doctrine is embodied in the first clause of sec. 11 of the Act. But the second clause declares, in accordance with the opinions of Story[2] and of Blackburn and Lush JJ.[3], that a foreign rule of limitation may be a defence to a suit on a foreign contract, when the rule has extinguished the contract, and the parties were domiciled in the *locus contractûs* during the prescribed period.

[1] 5 Moo. I. A. 265, 266; and see *Lopez* v. *Burslem*, 4 Moo. P C. 300.

[2] *Conflict of Laws*, § 582. See Westlake, *Private International Law*, 1880, p. 255.

[3] *Harris* v. *Quine*, L. R., 4 Q.B. 658.

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THE INDIAN LIMITATION ACT, 1877.

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As amended by Acts XII of 1879, VIII of 1880, IX of 1887, and VII of 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Act No. XV of* 1877 *received the assent of the Governor-General on the* 19*th of July*, 1877: *Act No. XII of* 1879 *received it on the* 29*th of July*, 1879: *Act No. VIII of* 1880 *received it on the* 12*th of March*, 1880: *Act XI of* 1887 *received it on the* 24*th February*, 1887; *and Act VII of* 1888 *received it on the* 23*rd March*, 1888.)

An Act for the Limitation of Suits and for other purposes.

Preamble.

Whereas it is expedient to amend the law relating to the limitation of suits, appeals and certain applications[1] to Courts; and whereas it is also expedient to provide rules for acquiring

[1] Not *all* applications, e. g. applications for certificates of sale (6 Bom. 586); for certificates to collect debts due to the estate of a deceased person (8 Mad. 207); for probate and letters of administration (7 Bom. 213: 6 Cal. 707): for permission to sue as a pauper (7 Bom. 375): by an attorney that a client should show cause why he should not pay a balance due for costs, 1 Bom. 253; and see 6 Cal. 60. The provisions of this Act as to applications apply to applications for the exercise, by the authority applied to, of powers which it would not otherwise be bound to exercise, 4 Mad. 172, followed in 6 Bom. 586 and 7 Bom 322.

From the circumstance that this Act prescribes a limitation to the Government for the institution of suits and presentation of criminal appeals the Madras High Court infers that the Government is not exempt from the provisions as to applications, 4 Mad 156.

by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called 'The Indian Limitation Act, 1877:'

Extent of Act.

It extends to the whole of British India[1]; but nothing contained in sections 2 and 3 or in Parts II and III applies—(*a*) to suits under the Indian Divorce Act[2], or (*b*) to suits under Madras Regulation VI of 1831[3];

Commencement.

and it shall come into force on the first day of October, 1877.

Repeal of Acts.

2. On and from that day, the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

References to Act IX of 1871.

Saving of titles and of Act IX of 1872, sec. 25.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired[4], or to revive any right to sue[5] barred[6], under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.

Suits for which period prescribed by

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day

[1] Outside British India the Limitation Act is in force in the Haidarábád Assigned Districts, the civil and military station of Bangalore, the cantonments of Sikandarábád, Dísah, and Ábu: in the lands in Native States occupied by the following railways: the Great Indian Peninsula Railway (*Kurundwar*), the Madras Railway (*Mysore*), the Nágpúr and Chhattisgarh State Railway (*Khairagarh and Nundgaon*), and the Rájputána Malwa State Railway; in the jágír territories of the State of Játh; Mysore; the head-works of the Bhawalwah-Lodran Canal (Bhawalpur Territory): see Macpherson's *Lists of British Enactments in force in Native States*, Calcutta, 1885, pp. 25, 78, 142, 173, 189, 262, 271, 281, 302, 304, 318, 336, 359, 418.

[2] Act IV of 1869.

[3] as to hereditary village and other offices.

[4] This does not include 'right to sue,' 3 All. 148.

[5] These words include all applications invoking the aid of the Court for the purpose of satisfying a demand, 5 Cal. 897, and see ibid. 894.

[6] 8 Bom. 104.

of October, 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October, 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years[1].

this Act is shorter than that prescribed by Act IX of 1871.

3. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply[2]; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued:

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another[3]:

'bill of exchange' includes also a hundí and a cheque:

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be[4]:

[1] Acts of limitation, like other laws relating to procedure, apply immediately to all steps taken after they have come into force, except when some provision is made to the contrary. Every one seeking the aid of a Court seeks it on the terms from time to time imposed by the legislature. He has not the privilege of making any application in any way and at any time. Other interests than his are at stake; and the Courts are not to exercise their coercive power at his request over another person, except under such regulations as shall make their action compatible with the general welfare, 7 Bom. 462, per West J.

[2] As to the title of purchasers at an execution-sale, see 16 Suth. P. C. 19, 20.

[3] This definition (which in Madras, the Central Provinces, and Coorg is repealed and re-enacted by Act V of 1882, sec. 3) includes what English lawyers call a *profit à prendre*, 5 Cal. 945, e. g. a prescriptive right to take fish out of water covering another's land.

[4] See infra, arts. 66, 67, 68, 74, 75, 80.

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

'trustee[1]' does not include a benámídár[2], a mortgagee remaining in possession after the mortgage has been satisfied[3], or a wrong-doer in possession without title[4]:

'suit' does not include an appeal or an application:

'registered' means duly registered in British India under the law for the registration of documents[5] in force at the time and place of executing the document, or signing the decree or order referred to in the context:

'foreign country' means any country other than British India;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention[6].

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, etc. instituted etc. after period of limitation.

4. Subject to the provisions contained in sections 5 to 25 (inclusive)[7], every suit instituted, appeal presented, and application[8] made, after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed[9], although limitation has not been set up as a defence[10].

[1] See sec. 10 infra.

[2] 2 Ben. A. C. 284.

[3] Ben. F. B. 901.

[4] See cases in Darby and B. 183, 184.

[5] See the Registration Act, infra.

[6] See secs. 14 and 18. The clause is taken from the Penal Code, sec. 52, supra, vol. I. p. 103.

[7] and applicable to the particular case, 1 All. 646. The burden of proving the circumstances here referred to is on the plaintiff, 24 Suth. Civ. R. 182.

[8] As to applications for leave to appeal to Her Majesty in Council, see 1 All. 644.

[9] 10 Cal. 658: 6 Mad. 326. But see 6 Bom. 103, 107, where the Court allowed the plaintiff to withdraw his suit in order to proceed in a foreign Court. As to costs see 6 Mad. 178, and *Boatwright* v. *Boatwright*, L. R., 17 Eq. 71.

[10] The effect of section 4 is this: Whenever a case is properly before a Court, whether of appeal or of first instance, the Court is bound to take notice of the question of limitation: but in order to enable the Appellate Court to do that, the case must be, in its entirety, before it, 9 Cal. 637. In India limitation need not be set up as a defence, while in England the

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer[1]; in the case of a pauper, when his application for leave to sue as a pauper is filed[2]; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(*a*) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The dependant appeals. The appellate Court must dismiss the suit.

(*b*) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Where Court is closed when period expires.

5. If the period of limitation prescribed[3] for any suit, appeal or application expires on a day when the Court is closed[4], the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens[5]:

Delay in presenting appeals and applications for review.

Any appeal or application for a review of judgment may be admitted[6] after the period of limitation prescribed therefor[7], when the appellant or applicant satisfies the Court that he had sufficient cause[8] for not presenting the appeal or making the application within such period[9].

defendant must expressly claim the operation of the statute, 5 Cal. 899.

The rule of limitation is confined to litigants, and is inapplicable to acts, such as amending decrees, which the Court may, or has to, perform *suo motu*, 8 All. 519, 533.

[1] 4 All. 37.

[2] 2 All. 241 (S. C. L. R., 6 I. A. 126), reversing 1 All. 230, and also, apparently, 4 Bom. H. C. A. C. J. 39 and 2 Cal. 391, 392, where the High Court held that this provision applied only where the application is granted and the suit is numbered and registered.

[3] i. e. by this Act, or by any special or local law, 5 Cal. 314 and 906: 7 Cal. 690 (Rent Act): 10 C. L. R. 333 (Registration Act, sec. 77): 10 Mad. 210 (Forest Act).

[4] If the offices of the Court are open for the presentation of pleadings the Court is not 'closed,' though the judicial sittings are adjourned for vacation, 5 Mad. 189, Innes J. dissenting.

[5] 6 Bom. 487: 1 All. 263.

[6] The power is discretionary, 13 Cal. 266: 9 All. 11. An order *ex parte* admitting an appeal after time may be set aside by the Court which made it, 9 Mad. 450: 5 Cal. 1. The High Court sitting on second appeal may look into the grounds which a Judge has given for admitting an appeal after the prescribed period, 8 Cal. 251.

[7] by the second schedule, 7 Cal. 654. But see the cases cited in note 3 supra.

[8] 11 Cal. 775: 15 Cal. 242: 9 All. 244, 655.

[9] The pendency of an appeal is not sufficient cause, 8 Bom. 260; and

Special and local laws of limitation.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed[1].

Legal disability.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor[2], or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed[3].

Double and successive disabilities.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed[4].

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death[5] as would otherwise have been allowed from the time so prescribed.

Disability of representative.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption[6], or shall be deemed to extend, for more than

see 10 Cal. 446. The provision does not apply to objections under sec. 561 of the Civil Pr. Code, 9 Cal. 632, nor to an application for leave to appeal as a pauper, 2 Mad. 230.

[1] That the general provisions of this Act are applicable to cases provided for by special laws, see 8 Bom. 531, following 5 Cal. 314: 8 Cal. 910, and 10 Cal. 265. See also 9 Mad. 118.

[2] 4 Cal. 523: 8 Cal. 517.

[3] He has his option either to sue or apply through his guardian or committee, or to wait till his disability ceases, 9 Cal. 182. See L. R., 3 I. A. 25-26, and 12 Bom. 18. A suit by a next friend on behalf of a minor is that of the minor, and is governed by the limitation-law applicable to the minor, 7 Cal. 137.

[4] As to the corresponding English law, see *Borrows* v. *Ellison*, L. R., 6 Ex. 128.

[5] The death, not the date of taking out administration, which, in the case of the greater part of the population of India, is not necessary

[6] See 1 All. 207.

three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made[1].

Illustrations.

(*a*) The right to sue for the hire of a boat accrues to *A* during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(*b*) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. *A* has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(*c*) A right to sue accrues to *Z* during his minority. After the accruer, but while *Z* is still a minor, he becomes insane. Time runs against *Z* from the date when his insanity and minority cease.

(*d*) A right to sue accrues to *X* during his minority. *X* dies before attaining majority and is succeeded by *Y*, his minor son Time runs against *Y* from the date of his attaining majority.

(*e*) A right to sue for an hereditary office accrues to *A*, who at the time is insane. Six years after the accruer *A* recovers his reason. *A* has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(*f*) A right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accruer, his idiocy continuing up to the date of his death. *A*'s representative in interest has, under the ordinary law, nine years from the date of *A*'s death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Disability of one joint creditor.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all[2]: but where no such discharge can be given, time will not run as against any of them until one of them becomes

[1] That the exemptions conferred by this section are personal, and do not attach to the property or title of minors, lunatics or idiots, see 9 Cal. 663, following 15 Ben. 357. See also 9 All. 411, following 1 Cal. 226.

[2] This applies to a case where a loan was made by the manager of a joint Hindú family of which one member was a minor but others were competent to give a discharge, 4 All. 512.

capable of giving such discharge without the concurrence of the others [1].

Illustrations.

(*a*) *A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*, *C* and *D*.

(*b*) *A* incurs a debt to a firm of which *E*, *F* and *G* are partners. *E* and *F* are insane, and *G* is a minor. Time will not run against any of them until either *E* or *F* becomes sane, or *G* attains majority.

Continuous running of time.

9. When once time has begun to run, no subsequent disability [2] or inability [3] to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues [4].

Suits against express trustees and their representatives.

10. Notwithstanding anything hereinbefore contained, no suit [5] against a person in whom property has become vested in trust for any specific purpose [6], or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property [7], shall be barred by any length of time [8].

[1] See 10 Bom. 241.

[2] 2 Mad. H.C. 340: 3 Ben. Appx. 80.

[3] i.e. personal disability or inability on the part of the plaintiff, 8 Bom. 569, 570.

[4] See *Binns* v. *Nichols*, L. R., 2 Eq. 256: *Seagram* v. *Knight*, L. R., 2 Ch. App. 628.

[5] by a beneficiary, 4 Cal. 455. See Judicature Act, 1873, sec. 25, cl. (2).

[6] i. e. purpose specified by the creator of the trust, 4 Cal. 470, per Markby J., as where a testator bequeathed property upon trust to pay a particular debt, 7 Cal. 772. The phrase corresponds nearly with the 'express trust' of 36 & 37 Vic. c. 66, sec. 25. It contemplates trusts like those mentioned in arts. 133, 134, namely, such as attach to property conveyed, or bequeathed in trust, deposited, pawned or mortgaged, 4 Cal. 919, per White J. But it does not apply to a constructive trust, 4 Cal. 455, nor to a resulting trust, 4 Mad. 404, nor to a case where a testator charges debts generally upon the whole or part of his estate, 7 Cal. 772, nor to a case where the Government had obtained possession of a zamíndárí by way of forfeiture, 8 Mad. 525, S. C. L. R., 12 I. A. 120. 6 Mad. 401: 4 All. 187, nor, of course, to a case where there is no trust-property, *Ex p. Smith*, 14 Q. B. D. 394.

[7] i. e. for the purpose of recovering the property for the trusts in question, L. R., 10 Ind. App. 96: S. C. 6 All. 1: 8 Bom. 469. The words 'such property' would probably be held to include property into which the property originally entrusted has been converted, also the produce thereof.

[8] The meaning of section 10 is

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act[1].

Suits on foreign contracts.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract[2], and the parties were domiciled in such country during the period prescribed by such rule.

Foreign limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded[3].

Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time re-

Exclusion in case of appeals and certain applications.

this: 'Where a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee, or having become so subsequently by operation of law), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation.' 4 Cal. 455, per Garth C.J., and see ibid. 923.

This section applies to a suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account, 8 Cal. 766.

But it does not apply to a claim to vindicate a trustee's personal right to the possession of immoveable property against another person claiming that right in the same character (7 Mad. 417, following L. R., 10 I. A. 90): nor to a suit against a trustee, not to recover trust-property in specie, but only for an account, 5 Cal. 910 (see however 8 Cal. 766, cited supra): nor, apparently, to cases where the trustee actually disavows his trust and sets up an adverse title, 3 Ben. A. C. 409: Story, *Eq.* sec. 1520. And in 4 Cal. 469 Markby J. thought that sec. 10 did not apply to mere fiduciaries such as agents, factors, managers, Hindú executors.

[1] 5 Moo. I. A. 234: *Don* v. *Lippman*, 5 Cl. & Fin. 1: *Lopez* v. *Burslem*, 4 Moo. P. C. 300.

[2] This should be 'extinguished the right resulting from the contract.' The exception was suggested by Story, *Conflict of Laws*, sec. 582.

[3] 2 Cal. 336: 6 Cal. 325: 2 Bom. 673: 6 Bom. H. C. A. C. J. 51. The expressions 'year' and 'month' in schedule II mean year and month reckoned according to the Gregorian calendar, Act I of 1868.

quisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded[1].

Where a decree is appealed against[2] or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Defendant's absence from British India.

13. In computing the period of limitation prescribed for any suit[3], the time during which the defendant has been absent from British India shall be excluded[4].

Time of proceeding *bonâ fide* in Court without jurisdiction.

14. In computing the period of limitation prescribed[5] for any suit, the time during which the plaintiff[6] has been prosecuting[7] with due diligence[8] another civil proceeding[9], whether in a Court of first instance or in a Court of appeal[10],

[1] The time during which an application for a review is pending should not be allowed as a matter of right But where a person has with what is, under the circumstances, reasonable diligence applied for a review, and the application has been entertained, and there was reasonable prospect that he would obtain all by the application that he could obtain by the appeal, the Court would be justified in accepting the explanation as 'sufficient cause' (sec. 5) for not presenting the appeal, 7 Mad. 584.

[2] 1 All. 646, 649.

[3] This section does not include applications, 3 All. 185.

[4] This section is in no way affected or qualified by sec. 9. Its intention is to save creditors, subsequently suing their debtors, the period during which such debtors have been absent from British India, 8 Bom. 569, following 4 All. 530 and dissenting from 6 Bom. 103. In 10 Cal. 440 Tottenham J. is said to have held that sec. 13 did not apply to a case where, to the plaintiff's knowledge, the absent defendant is represented in British India by a duly authorised agent, *sed qu.* As to what is a return to British India, see *Gregory* v. *Hurrill*, 5 B. & C. 341. It is not necessary that the plaintiff should be aware of the defendant's return, 2 N. W. P. 173.

The section does not, as it ought, provide for the case of several defendants, one of whom only has been absent from British India, see 3 Cal 360.

[5] by this or any other Act, 10 Cal. 267.

[6] or the person through whom he claims; and see 1 Suth. Civ. R. 310, where held that a plaintiff was entitled to exclude from the period of limitation the time during which he as *defendant* in a former suit was urging the same claim.

[7] Does this include pleading a set-off, or resisting an appeal which has been disallowed or rejected for want of jurisdiction or some similar defect?

[8] 3 Bom. 184 and 223.

[9] i. e. apparently, in a Court having jurisdiction in British India, not in a foreign court, 2 Mad. 407 A conciliator is not a Court, 6 Bom. 31; but see 8 Bom. 411.

[10] 24 Suth. Civ. R. 407, note.

against the defendant[1], shall be excluded, where the proceeding is founded upon the same cause of action[2], and is prosecuted in good faith in a Court which, from defect of jurisdiction[3], or other cause of a like nature[4], is unable to entertain it.

Like exclusion in case of order under Civil Proc. Code, s. 20.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

Like exclusion in case of application.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it[5].

Explanation I.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

Time during which institution of suit is stayed by injunction.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or

[1] or the person through whom he derives liability to be sued; and see 1 Suth. Civ. R. 310.

[2] 3 Bom. 223.

[3] 2 Mad. H. C. 266: 7 Mad. H. C. 242: 3 Cal. 791 and 817: 8 All. 478: 8 Bom. H. C. 228.

[4] e. g. bringing a suit against one who had died before the plaint was filed, 12 Suth. Civ. R. 45; misjoinder of parties, 2 All. 622: 10 Cal. 88; over-valuation of suit, 7 Cal. 284. But not limitation, 11 Cal. 264; nor absence of a registered certificate, 10 Bom. 604; nor omitting to give boundaries, 6 Suth. Civ. R. 184; nor bringing the previous suit in the name of a wrong person, 7 Cal. 284, 367.

[5] 24 Suth. Civ. R. 303.

made, and the day on which it was withdrawn, shall be excluded[1].

Time during which judgment-debtor is attempting to set aside execution-sale.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded[2].

Effect of death before right to sue accrues.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative[3] of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative[3] of the deceased against whom the plaintiff may institute or make such suit or application[4].

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

Effect of fraud.

18. When any person having a right to institute a suit or make an application has, by means of fraud[5], been kept[6] from

[1] 3 Bom. 182: 8 Mad. 229, 234. This section relates only to injunctions and orders staying the institution of *suits*, and 'suit' does not include an 'application' (sec. 3). Therefore, where an injunction obtained against the execution of a decree has been discharged, the time during which it was in force cannot be deducted under this section in computing the period within which execution may be applied for, 5 Bom. 30. But see infra, sched. II. art. 178.

[2] 2 Suth. Misc. 9. Other exclusions are the Sind Encumbered Estates Act, XX of 1881, sec. 19, and the Broach and Kaira Encumbered Estates Act, XXI of 1881, sec. 19.

[3] See Acts XXI of 1870, V of 1881, sec. 82, and 4 Cal. 342.

[4] 7 Cal. 627, 632.

[5] See the Contract Act, sec. 17: 21 Suth. Civ. R. 245, col. 1: 2 Cal. 8, note: 3 Mad. 384, 399; and *Dean* v. *Thwaite*, 21 Beav. 621. As to fraud by a third person, see 2 Cal. 1 and 1 Ben. A.C. 76.

[6] This implies that the fraud must be active, as in the English case of *Vane* v. *Vane*, L. R., 8 Ch. App. 383, where the plaintiff (really the eldest legitimate son of his parents), was designedly brought up in the belief that he was only the second legitimate son.

the knowledge of such right or of the title on which it is founded,

or where any document necessary[1] to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application

(*a*) against the person guilty of the fraud or accessory thereto, or,

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration[2],

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production[3].

Effect of acknowledgment in writing.

19. If, before the expiration of the period prescribed[4] for a suit or application in respect of any property or right[5], an acknowledgment[6] of liability in respect of such property or right[7] has been made in writing[8] signed[9] by the party

[1] such as a will or codicil, not one only useful in evidence, 7 Mad. H. C. 22.

[2] See 5 Mad. H. C. 390: 1 Bom. 269.

[3] 14 Cal. 679.

[4] by any rule of limitation for the time being in force. But see 5 Bom. 688, a decision on Act IX of 1871.

[5] This includes an application for the execution of a decree, 8 Cal. 716: 9 Cal. 730: 3 All. 247: 5 All. 205; and an application for the postponement of an execution-sale, 10 Bom. 108, 111. But see 5 Mad. 171, where the Madras High Court (dissenting from the High Court at Allahabad, 3 All. 247) held that this section does not apply to applications in execution of decrees, and that the applications intended are proceedings where relief in respect of some property or right is sought otherwise than by regular suit, e. g. under the Acts regulating the rights of landlord and tenant in Bengal.

[6] 2 Bom. H. C. 330: 5 Cal. 215: 8 Cal. 716. There cannot be an acknowledgment without knowledge that the party is admitting something, 8 Bom. 102.

[7] The acknowledgment of liability must be precisely in respect of the right claimed, 6 Mad. 182. As to acceptance of a sale-certificate granted to the purchaser of mortgagee's interest, see ibid. 325: as to letter by drawer to drawee of dishonoured hundí, requesting him to pay the amount, 7 Mad. 392.

[8] 2 Mad. H.C. 307: 5 ibid. 90: 6 ibid. 267: 7 Bom. A. C. 125: 6 Ben. 299.

[9] either at the beginning or end, or in the body of the instrument. It is not the practice of Hindú bankers to sign their letters at the foot. Their letters are ordinarily headed with an intimation of the addressee and sender, 1 All. 685. Where the whole of a *khata* (or account stated) is written by the debtor himself, his name occurring at the top of the entry, the *khata* is sufficiently signed, 5 Bom. 89.

against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period[1] of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received[2].

Explanation I.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right[3].

Explanation II.—In this section 'signed' means signed either personally or by an agent duly authorized in this behalf[4].

Effect of payment of interest as such.

20. When interest on a debt or legacy is, before the expiration of the prescribed period[5], paid[6] as such[7] by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Part-payment of principal.

or when part of the principal of a debt[8] is, before the expiration of the prescribed period, paid[6] bv the debtor or by his agent duly authorized in this behalf,

[1] 11 Bom. 282, following 6 Cal. 340.

[2] This does not exclude oral evidence of the contents of an acknowledgment which has been destroyed or lost, 12 Cal. 267: 13 Cal. 292.

[3] reversing the decision in 2 Hyde, 14. Acknowledgment by a principal as surety only has been held sufficient, 10 All. 93. When the acknowledgment is of a debt exceeding rs. 20 it cannot be given in evidence unless it is stamped.

[4] 7 Bom. 515, where a balance of account was written by *A* at the request of an illiterate debtor *B*, in *B*'s name and signed by *A* in his own name, and this was held sufficient. The manager of a Hindú family has the same authority to acknowledge, as he has to create, debts on behalf of the family; but he has no power to revive a time-barred claim unless he is expressly authorized to do so, 5 Mad. 169: 14 Ben. 21, 49; see, however, 1 Mad. 385, 386.

[5] of limitation, not the period prescribed for the payment of the debt, 6 Cal. 815.

[6] See the Contract Act, sec. 50.

[7] 3 Bom. 198.

[8] A sum realized by an execution-sale cannot be considered part payment within the meaning of this clause, 6 Bom. 626.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment[1] was made:

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment[2] appears in the handwriting[3] of the person making the same[4].

Receipt of produce of mortgaged land

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section[5].

One joint contractor etc. not chargeable by reason of acknowledgment by another.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only[6] of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

Substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party[7]:

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff:

[1] See the Contract Act, sec. 50.

[2] The appropriation of the payment need not appear, 6 Mad. 281. As to this see the Contract Act, secs. 59-61.

[3] Signature by mark is enough, 7 Mad. 55, 76. *Sed quaere.* The endorsement by the debtor of a cheque to the creditor is not sufficient evidence of part-payment, 9 Mad. 271.

[4] In this section 'debt' means a liability to pay money for which a suit could be brought, and not one for which a judgment has been obtained, 2 Cal. 468. *Contra* 5 All. 201.

[5] But the receipt of the produce of land held under a mortgage-deed required to be, but not, registered, is not such a payment, 7 Mad. 539.

The rule as to excluding the first day (sec. 12) applies to cases under secs. 19 and 20.

[6] When a partner signs the acknowledgment it must be shown that he had authority, express or implied, to do so. In a going mercantile concern such agency is to be presumed as an ordinary rule, 10 Bom. 358.

[7] 6 Cal. 823-4: 7 Cal. 287. As to the effect of this section in case of joint contractees, see 6 Cal. 824 (dissenting from 3 Cal. 26): 7 Bom. 219. There is no analogous provision with respect to appeals, and therefore the Court may in its discretion allow a party to be added to the record after the period prescribed for the admission of an appeal has elapsed, 2 All. 109, and see ibid. 487.

Proviso where original defendant dies.

Provided also, that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant[1].

Continuing breaches and wrongs.

23. In the case of a continuing breach of contract[2] and in the case of a continuing wrong independent of contract[3], a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues[4].

Suit for compensation for act not actionable without special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(*a*) *A* owns the surface of a field. *B* owns the subsoil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence[5].

(*b*) *A* speaks and publishes of *B* slanderous words not actionable in themselves without special damage caused thereby. *C* in consequence refuses to employ *B* as his clerk. The period of limitation in the case of a suit by *B* against *A* for compensation for the slander does not commence till the refusal[6].

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar[7].

[1] This section does not apply to a case in which the person to whom a right of suit is assigned after the institution of the suit obtains leave to carry on the suit, 5 Cal. 720. Nor does it apply to appeals, 2 All. 107.

[2] 4 All. 493: 10 All. 85. As to the vendor's covenant for quiet enjoyment, see 2 Bom. 293: as to a covenant by a purchaser to pay certain fees annually to the vendor, 4 All. 493.

[3] 6 Bom. 20 (obstruction to drain, L. R., 7 I A. 248): S. C. 6 Cal. 394 (obstruction to flow of water).

[4] This section must be read in connexion with articles 37, 38 and 39 of the second schedule.

[5] *Backhouse* v. *Bonomi*, 9 H. L. C 503, and see 11 App. Ca. 127.

[6] Bullen & Leake, 3rd ed. 749: see 3 Mad. H. C. 407.

[7] This means that the parties to every instrument shall be deemed to have used the terms 'year' and 'month' in the sense which they bear in the Gregorian calendar, 4 Bom. 103. See 4 Cal. 497, on Ben Act VIII of 1869.

Illustrations.

(*a*) A Hindú makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar[1].

(*b*) A Hindú makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar[2].

PART IV[3].

ACQUISITION OF OWNERSHIP BY POSSESSION[4].

Acquisition of right to easements.

26. Where the access and use of light or air[5] to and for any building have been peaceably enjoyed therewith, as an easement, and as of right[6], without interruption, and for twenty years, and where any way or watercourse, or the use of any water, or any other easement[7] (whether affirmative or negative) has been peaceably and openly[8] enjoyed[9] by any person claiming

[1] This applies even where it appears on the face of the note that lunar months were intended by the parties, 6 Bom. 83, 85. *À fortiori* when the note bears an English as well as a Native date, as in 7 Bom. H. C. A. C. J. 77.

[2] See note 7, previous page.

[3] Of this Part, secs. 26 and 27 have, in the Madras Presidency, the Central Provinces and Coorg, been repealed and reenacted with some change, by the Easements Act, V of 1882, supra vol. I. pp. 893, 904, 905.

[4] This Act 'has nothing to do with prescription,' which 'implies a grant.' But rights of way, as well as other easements, may still be claimed in India by prescription, 5 Mad. 226: 6 Cal. 394, 812; and when so claimed the conditions of their acquisition in England (the knowledge on the part of the servient owner and his capacity to obstruct) will be recognised in India, 10 Cal. 218, per Garth C.J. That the non-statutory law of prescription applicable to India is the English law before the Prescription Act, 2 & 3 Will. IV, c. 71, see 6 Ben. 85: 12 Ben. 406: 3 Ben. O. C. J. 41.

[5] 14 Cal. 839, following 3 Ben. O. C. J. 41.

[6] i. e. as claiming a right thereto against all persons, and especially as against the owner of the servient tenement, 15 Ben. 365, 366, and see 23 Suth. Civ. R. 52. The enjoyment of apertures admitting light and air is an enjoyment 'as of right' when it is open and manifest, not furtive or invisible, and when it is not had in such wise as to involve the admission of an obstructive right in the owner of the alleged servient tenement. The phrase does not mean a right acquired through grant from the servient owner, though the presumption of a grant from an enjoyment for 20 years was the basis of the English law on the subject, 7 Bom. 524, 525.

[7] This includes a fishery, sec. 3, supra, p. 959; see 5 Cal. 524-6 and 945: 9 Cal. 698, 703.

[8] 1 Cal. 422: 10 Cal. 214. The enjoyment need not be actually known to the servient owner, *ib.* 218.

[9] Notwithstanding illustration (*b*), this does not mean 'actually used,' 7 Cal. 136.

title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested[1].

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made[2].

Illustrations.

(*a*) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January 1860 to 1st of January 1880. The plaintiff is entitled to judgment.

(*b*) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit[3].

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

27. Provided that, when any land or water upon, over, or

[1] 24 Suth. Civ. R. 295.

[2] As to the issues to be framed under this section, see 6 Cal. 812.

The provisions of section 26 do not exclude, or interfere with, the acquirement of title otherwise than under them. The Act is remedial, not prohibitory or exhaustive, 6 Cal. 394: L. R., 7 I. A. 240, 246–247.

[3] Illustrations ought never to be allowed to control the plain meaning of the section itself, and certainly they ought not to do so when the effect would be to curtail a right which the section in its ordinary sense would confer. This illustration, therefore, so far as it seems to imply that, in the case of discontinuous easements, actual user is to continue for the whole period of twenty years, must be rejected, 7 Cal. 135, 136

from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land of water.

Exclusion in favour of reversioner of servient tenement.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C*, a Hindú widow, had a life interest in the land, that on *C*'s death *B* became entitled to the land, and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished[1].

Extinguishment of right to property.

[1] Compare 3 & 4 Wm. IV, c. 27, sec. 34 Neither a special mode of devolution, nor an incapacity for alienation, will prevent limitation from operating against an estate, even in the case of sacred property, which is generally inalienable, 9 Bom. 231, per West J., citing *Austin* v. *Llewellyn*, 9 East, 276: *Mayor of Brighton* v. *Guardians of Brighton*, L. R., 5 C. P. 368, and the Indian cases in 6 Bom. 299, 300: 7 Bom. 188, and 7 Mad. 337. When the principal demand is lost, suits for accessory liabilities, such as interest on arrears, are lost also, 1 Mad. 231, per Holloway J., citing Savigny, *Syst.*, v. § 311.

As regards debts the Indian laws of limitation merely bar the remedy, but do not extinguish the right, 5 Cal. 897: 6 Cal. 340. and this view is certainly supported by the Contract Act, sec. 25, cl. (3). But see the same Act, sec. 2, cl. (*j*). The Bombay High Court seems to doubt, 5 Bom. 647.

As to acquisitive prescription, see 8 Bom. H.C. A. C. J. 171, and 9 Bom. 227, per West J. The Calcutta High Court has held that twelve years' continuous possession of land by a wrongdoer not only extinguishes the title of the rightful owner, but confers a good title upon the wrongdoer. It has, further, held (in 11 Ben. 237) that the title of the wrong-doer can be transferred to a third person while it is in course of acquisition and before it has been perfected by a twelve years' possession, 3 Cal. 226, citing 11 Moore, I. A. 345: 8 Ben. 540; and 20 Suth. Civ. R. 104. As to acquiring possessory title to a mortgaged estate, see 7 Mad. 26.

THE FIRST SCHEDULE.

(*See Section* 2.)

Number and year of Acts.	*Title.*	*Extent of repeal.*
X of 1865 ...	The Indian Succession Act.	In section 321, the words 'within two years after the death of the testator, or one year after the legacy has been paid.'
IX of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words 'within thirty days from the date of the order.'

THE SECOND SCHEDULE.

(*See section* 4.)

FIRST DIVISION: SUITS.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
	PART I. *Thirty days.*	
1. To contest an award of the Board of Revenue under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste-lands*).	One year ...	When notice of the award is delivered to the plaintiff.
	PART II. *Ninety days.*	
2. For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days	When the act or omission takes place.
	PART III. *Six months.*	
3. Under the Specific Relief Act, 1877, section 9[1], to recover possession of immoveable property.	Six months ...	When the dispossession occurs.

[1] This section does not apply to a mere trespasser, supra, vol. I. p. 948.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
4. Under Act No. IX of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers*), section one.	Six months ...	When the wages, hire or price of work claimed accrue or accrues due.
5. Under the Code of Civil Procedure, chapter XXXIX (*Of summary procedure on negotiable instruments*)[1].	Ditto	When the instrument sued upon becomes due and payable.
	PART IV. *One year.*	
6. Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7. For the wages of a household servant[2], artisan[3] or labourer[4] not provided for by this schedule, No. 4.	Ditto	When the wages accrue due[5].
8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto	When the food or drink is delivered.
9. For the price of lodging	Ditto	When the price becomes payable.
10. To enforce a right of preemption, whether the right is founded on law, or general usage, or on special contract[6].	Ditto	When the purchaser takes, under the sale sought to be impeached, physical possession[7] of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered[8].

[1] Supra, pp. 669–671.

[2] 6 Suth. Civ. Ref. 11: 1 Ben. S. N. xx: 4 Bon. Appx. 68.

[3] 2 Mad. H. C. 6.

[4] 6 Suth. Civ. Ref. 33.

[5] 2 Mad. H. C. 387. A person whose duties are to sweep and clean a temple and provide flowers for daily worship and garlands for the idol is not a 'household servant' or 'labourer,' 7 Mad. 99. And art. 7 does not apply to the pay of a teacher of wrestling and fencing, 8 Mad. H. C. 87; nor to a suit against any one not liable as master or employer, 4 Mad. H. C. 43.

[6] 7 All. 169. This article does not apply to suits to enforce a right of preëmption in respect of a mortgage by conditional sale, 4 All. 218, 415. As to the former law see 1 All. 315.

[7] 2 All. 409: 3 All. 175: 4 All. 24 and 293: 9 All. 234. Article 10 does not provide for the case where the property does not admit of physical possession, and being under rs. 100 in value is conveyed by an unregistered instrument.

[8] 4 All. 179. It will be remembered that preëmptors are expressly excluded from the benefit of section 7.

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
11. By a person against whom an order is passed under section 280, 281, 282 or 335[1] of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order[2].	One year ...	The date of the order.
12. To set aside any of the following sales:— (*a*) sale in execution of a decree of a civil Court[4]; (*b*) sale in pursuance of a decree or order[5] of a Collector or other officer of revenue; (*c*) sale for arrears for Government revenue, or for any demand recoverable as such arrears[6]; (*d*) sale of a patní taluq sold for current arrears of rent. *Explanation.*—In this clause 'patní' includes any intermediate tenure saleable for current arrears of rent[7].	Ditto	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought[3]
13. To alter or set aside[8] a decision or order[9] of a Civil Court in any proceeding other than a suit[10].	Ditto	The date of the final decision or order in the case by a Court competent to determine it finally.

[1] It is probable that sec. 332 was here omitted by oversight, 8 Mad. 82.

[2] Art. 11 refers only to suits contemplated by sec. 263 of the Civil Procedure Code, 12 Cal. 453.

[3] Art. 12 is intended to protect *bonâ fide* purchasers only, 9 Mad. 457, 460.

[4] This applies to suits by strangers, as well as by parties to the suit, 7 Mad. 261; but see 5 Mad. 54, where the sale was a nullity and art. 12 did not apply. And see 11 Bom. 119, 123; 12 Bom. 18, and 6 Suth. Civ. R. 305 (sham sales).

[5] 'Order' here means an order of the nature of a decree, or made by the Collector or other revenue officer in his judicial capacity, 8 Bom. H. C., A. C. J. 219.

[6] This applies although no arrears were actually due when the sale took place, 8 Cal. 329.

[7] Article 12 applies only when the plaintiff would be bound by the sale if he did not succeed in getting it set aside, 11 Bom. 130, and see ibid. 429.

[8] 5 Cal. 86.

[9] i.e. a decision or order which, until reversed, is valid and binding on the plaintiff. It has been held that art. 13 does not apply when the order merely amounts to a declaration that the Court has no jurisdiction to act in the proceeding before it, 6 Cal. 142; *sed qu.*

[10] 4 Bom. 21; 13 Cal. 159.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order[1].
15. Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of government revenue[2].	Ditto	When the attachment, lease or transfer is made.
16. Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto	When the payment is made.
17. Against Government for compensation for land acquired for public purposes.	Ditto	The date of determining the amount of the compensation.
18. Like suit for compensation when the acquisition is not completed[3].	Ditto	The date of the refusal to complete.
19. For compensation for false imprisonment.	Ditto	When the imprisonment ends.
20. By executors, administrators or representatives under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and be sued for certain wrongs*).	Ditto	The date of the death of the person wronged.
21. By executors, administrators or representatives under Act No. XIII of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*).	Ditto	The date of the death of the person killed.
22. For compensation for any other injury to the person.	Ditto	When the injury is committed.

[1] 'Articles 12 and 14 refer to orders and proceedings of a functionary, to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or set them aside,' 11 Bom. 429; see 2 Mad. 306; see also 10 Cal. 525, where, in a suit for declaration of title, a prayer for reversal of orders passed under the Land Registration Act (Ben. Act VII of 1876) was treated as surplusage.

[2] 14 Suth. Civ. R. 203.

[3] Act X of 1870, sec. 54.

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
23. For compensation for a malicious prosecution.	One year ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated [1].
24. For compensation for libel [2] ...	Ditto	When the libel is published.
25. For compensation for slander .	Ditto	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter [3].	Ditto	When the loss occurs.
27. For compensation for inducing a person to break a contract with the plaintiff.	Ditto	The date of the breach.
28. For compensation for an illegal, irregular or excessive distress.	Ditto	The date of the distress.
29. For compensation for wrongful seizure of moveable property under legal process [4].	Ditto	The date of the seizure.
	PART V. *Two years.*	
30. Against a carrier [5] for compensation for losing or injuring [6] goods.	Two years ...	When the loss or injury occurs [7].
31. Against a carrier for compensation for delay in delivering goods.	Ditto	When the goods ought to be delivered.
32. Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto	When the perversion first becomes known to the person injured thereby [8].

[1] in favour of the plaintiff, 13 Suth. Civ. R. 118. The conduct of the prosecutor is looked on as a continuous act prolonged until the close of the case, 7 Bom. 430.

[2] false and malicious publication of defamatory matter.

[3] As to whether such a suit can be brought by a Hindú father, see 4 All. 97.

[4] This article applies to a suit to recover money wrongly taken under a decree, 8 Bom. 17.

[5] whether by land or sea, 3 Mad. 110 and 240.

[6] The loss or injury intended arises from malfeasance, misfeasance or nonfeasance independent of contract, 3 Mad. 110, and 240.

[7] 12 Cal. 477. The burden of proving the loss rests on the defendant, in a suit for the price of goods not delivered, 7 Bom. 478. To a suit against a railway-company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, art. 115, not art. 30, applies, inasmuch as the consignor contracts with the company as agent for the consignee, and the property in the goods passes to the consignee on delivery to the company, 5 Mad. 388.

[8] This applies to a landholder's suit

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
33. Under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and to be sued for certain wrongs*) against an executor, administrator or other representative.	Two years ...	When the wrong complained of is done.
34. For the recovery of a wife [1] ...	Ditto	When possession is demanded and refused.
35. For the restitution of conjugal rights.	Ditto	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36. For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Ditto	When the malfeasance, misfeasance or nonfeasance takes place [2].
	PART VI. *Three years.*	
37. For compensation for obstructing a way or a watercourse.	Three years	The date of the obstruction [3].
38. For compensation for diverting a watercourse.	Ditto	The date of the diversion [3].
39. For compensation for trespass upon immoveable property.	Ditto	The date of the trespass [4].
40. For compensation for infringing copyright or any other exclusive privilege [5].	Ditto	The date of the infringement.
41. To restrain waste [6]	Ditto	When the waste begins.
42. For compensation for injury caused by an injunction wrongfully obtained.	Ditto	When the injunction ceases [7].

for the removal of trees planted by his occupancy-tenant, 8 All. 446. But see 6 Cal. 34.

[1] Supra, pp. 563, 564.

[2] 11 Bom. 133 (suit for damages for loss of ship by collision); 4 Cal. 665 (wrongful removal of standing crops). Art. 36 applies to suits for compensation for obstructing etc. all easements not coming within arts. 37 and 38. 'Malfeasance' is committing an unlawful act; 'misfeasance' is improperly performing a lawful act; and 'nonfeasance' is omitting an act which one is bound to do.

[3] See sec. 23 supra.

[4] See sec. 23 supra. A trespass continues until the trespasser's possession comes to an end, 6 Mad. 178.

[5] *eiusdem generis*, such as a patent. The article should be extended expressly to suits for an account of the profits obtained by the infringement; see 3 Cal. 17.

[6] of property whether immoveable or moveable (6 Moo. I. A. 433). See the Specific Relief Act, sec. 54, ills. (*m*) and (*n*).

[7] See as to the previous law, 5 Ben. Appx. 4.

FIRST DIVISION. *Suits.*	*Description of suit.*	*Period of limitation.*	*Time from which period begins to run.*
	43. Under the Indian Succession Act, 1865, section 320 or 321, or under the Probate and Administration Act, 1881, section 139 or 140[1], to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years...	The date of the payment or distribution.
	44. By a ward who has attained majority, to set aside a sale by his guardian.	Ditto	When the ward attains majority[2].
	45. To contest an award under any of the following Regulations of the Bengal Code:— VII of 1822[3], IX of 1825, and IX of 1833.	Ditto	The date of the final award or order in the case.
	46. By a party bound by such award to recover any property comprised therein.	Ditto	The date of the final award or order in the case.
	47. By any person bound by an order respecting the possession of property[4] made under the Code of Criminal Procedure, chapter XL[5], or the Bombay Mámlatdárs Courts Act[6], or by any one claiming under such person, to recover the property comprised in such order[7].	Ditto	The date of the final order in the case.
	48. For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same[8].	Ditto	When the person having the right to the possession of the property first learns in whose possession it is.
	49. For other specific moveable property[9], or for compensation for wrongfully taking or injuring[10] or wrongfully detaining the same.	Ditto	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful[11].

[1] Act V of 1881, s. 156.

[2] 4 Cal. 523; 5 Cal. 363.

[3] 3 All. 738.

[4] whether moveable or immoveable, 1 Mad. 309: 3 Cal. 709.

[5] i. e. chap. XII of the present Code.

[6] Bom. Act III of 1876.

[7] This article does not apply to an attachment under sec. 146 of the Criminal Procedure Code, 1 Mad. 309, nor to a partition-suit, 5 Bom. 27.

[8] 5 All. 341.

[9] in the hands of some person other than the plaintiff, 11 Bom. 133. 'Property' here and in art. 48 would include title-deeds and money (8 Bom. 17; 5 All. 341); but not standing crops.

[10] The injury is injury to property while in the custody of some person other than the owner, 11 Bom. 133, per Farran J.

[11] 5 Bom. 554: 9 Cal. 79.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
50. For the hire of animals, vehicles, boats or household furniture.	Three years...	When the hire becomes payable.
51. For the balance of money[1] advanced in payment of goods to be delivered.	Ditto	When the goods ought to be delivered[2].
52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto	The date of the delivery[3] of the goods.
53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto	When the period of credit expires.
54. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto	When the period of the proposed bill elapses.
55. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto	The date of the sale.
56. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto	When the work is done.
57. For money payable for money lent.	Ditto	When the loan is made.
58. Like suit when the lender has given a cheque for the money.	Ditto	When the cheque is paid[4].
59. For money lent under an agreement that it shall be payable on demand[5].	Ditto	When the loan is made.
60. For money deposited under an agreement that it shall be payable on demand.	Ditto	When the demand is made.
61. For money payable to the plaintiff for money paid for the defendant.	Ditto	When the money is paid.
62. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use[7].	Ditto	When the money is received[6].

[1] 3 All. 793. [2] 7 Suth. Civ. R. 164.

[3] See the Contract Act, ss. 90–92, vol. I. supra, pp. 599, 600.

[4] *Garden* v. *Bruce*, L. R., 3 C. P. 300.

[5] This in point of law is the same thing as repayable at once, 10 Cal. 1034. But see 4 Cal. 294.

[6] for the plaintiff's use.

[7] This article applies to a suit for the recovery of money obtained by fraud and collusion, 2 Cal. 393; to a suit for money deposited by the plaintiff with the defendant upon the understanding that it will be returned on a certain event, 5 Cal. 830; to a claim by one heir to a moiety of moneys

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
63. For money payable for interest upon money due from the defendant to the plaintiff[1].	Three years...	When the interest becomes due.
64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated[2] between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing[3] signed as aforesaid, made payable at a future time, and then when that time arrives[4].
65. For compensation[5] for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency[6].	Ditto	When the time specified arrives or the contingency happens.
66. On a single bond[7] where a day is specified[8] for payment.	Ditto	The day so specified.
67. On a single bond where no such day is specified[9].	Ditto	The date of executing the bond.
68. On a bond subject to a condition.	Ditto	When the condition is broken.
69. On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due[10].

which at the time of his ancestor's death were deposited with a banker, and which the other heir had received, 3 All. 170; to a claim by one sharer against another of an allowance attached to an hereditary office, 8 Bom. 426; to a suit by one co-sharer in a *deshpánde ratan* against another who is bound to recover arrears, 9 Bom. 111; to a suit by an inámdár for arrears of the money-value of a fixed quantity of grain to be paid yearly to him by his tenant, 8 Bom. 234; to a suit by one joint bond-holder against the other for a share of the money realized under a decree in respect of the bond, 6 All. 442; to a suit by the holder of a money-decree which had been sold in execution of a decree against him, against the auction-purchaser (the sale having been set aside) for the money he had recovered under the decree sold, 2 All. 354, and see 10 Bom. 665: 1 All. 333: 10 Cal. 860.

[1] 3 All. 328. When the suit for the principal is barred, see 1 Mad. 228, and 5 Cal. 765.

[2] See vol. I. p. 532, and 6 Cal. 451. See also 7 Bom. 414 and 3 All. 148.

[3] A simultaneous *verbal* agreement cannot extend the period, 8 Bom. 542; and the statement must amount to a promise, 6 Bom. 684.

[4] The article does not contemplate a case in which the accounts are stated *orally*, 2 All. 874: 10 Cal. 284. Garth C.J., however, held (7 Cal. 262) that it applies to such cases.

[5] liquidated or not.

[6] 3 All. 712: 5 Cal. 830.

[7] 4 All. 3, 6.

[8] 2 All. 331: 5 Cal. 21.

[9] 3 All. 415.

[10] *Wittersheim* v. *Countess Dowager of Carlisle*, 1 H. Bl. 631.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
70. On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years...	When the bill is presented [1].
71. On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place.
72. On a bill of exchange or promissory note payable at a fixed time after sight or after demand [2].	Ditto	When the fixed time expires [3].
73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue [4].	Ditto	The date of the bill or note [5].
74. On a promissory note or bond payable by instalments.	Ditto	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75. On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment [6], the whole shall be due [7].	Ditto	When the first default is made, unless where the payee or obligee waives [8] the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

[1] *Dixon* v. *Nuttall*, 1 Cr. M. & R. 307.

[2] *In re Rutherford*, 14 Chan. Div. 687.

[3] *Thorpe* v. *Booth*, 1 Ry. & Moo. 388.

[4] This article does not apply to a note promising to pay money with interest 'at any time within six years on demand,' 6 Mad. 290.

[5] *Christie* v. *Fonsick*, 1 Sel. N. P. 13th ed. 301.

[6] of the principal.

[7] This article covers the case of a second waiver. It does not apply to a suit brought upon a verbal contract, 3 Cal. 619, nor to a case where the note or bond gives the creditor the option of suing or waiting, 3 Cal. 619, 5 Cal. 21. The question arising under art. 75 resembles the question arising under a decree for the recovery of a sum by instalments, the decree providing that if default is made in paying any instalment the whole sum shall become due, viz., whether the decree-holder did, at the time default was made, waive his right to the whole sum decreed to him, or whether he did not? 14 Cal. 354, per Petheram C.J.

[8] Subsequent acceptance of an instalment in arrear operates as a waiver (see, however, 2 All. 863, per Straight J.); but not merely allowing the default to pass unnoticed, 5 Cal. 97; nor mere abstinence from suing, 7 Mad. 577 and 584, or from enforcing a condition, 14 Cal. 397. The Court cannot compel the obligee to waive, 4 Bom. 99, following *Sterne* v. *Beck*, 32 L. J. Chan. 682.

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years...	The date of the delivery to the payee [1].
77. On a dishonoured foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given [2].
78. By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept [3].
79. By the acceptor of an accommodation-bill against the drawer.	Ditto	When the acceptor pays the amount of the bill [4].
80. Suit on a bill of exchange, promissory note or bond not herein expressly provided for [5].	Ditto	When the bill, note or bond becomes payable.
81. By a surety against the principal debtor.	Ditto	When the surety pays the creditor [6].
82. By a surety against a co-surety.	Ditto	When the surety pays anything in excess of his own share.
83. Upon any other contract to indemnify.	Ditto	When the plaintiff is actually damnified [7].
84. By an attorney or vakíl for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto	The date of the termination of the suit or business [8], or (where the attorney or vakíl properly discontinues [9] the suit or business) the date of such discontinuance.

[1] *Savage* v. *Aldren*, 2 Stark. 232.

[2] *Whitehead* v. *Walker*, 9 M. & W. 506.

[3] 3 Bom. 182.

[4] *Reynolds* v. *Doyle*, 2 Scott, N.R. 45.

[5] The suit on the note mentioned in 6 Mad. 290 came under this article, and not, as the High Court inadvertently held, under art. 120.

[6] *Davies* v. *Humphreys*, 6 M. & W. 153.

[7] 5 Cal. 811: 12 Bom. H. C. 238: *Collinge* v. *Heywood*. 9 A. & E. 633.

[8] 'Primâ facie,' says Blackburn J. (*Harris* v. *Quine*, L. R., 4 Q. B. 658), 'the termination of a suit is when judgment is given in the court in which the action is commenced; but when an appeal is brought, and the same attorneys continue to conduct the suit on appeal, that is a continuation of the original suit.' Sic 7 Bom. 518, 520. Secus 7 Mad. 1, where held that a suit is not terminated till the costs are taxed and inserted in the decree, and the decree is issued. A compromise between decree-holder and judgment-debtor, not made through, or certified to, the Court, is not a 'termination,' 1 Bom. 505.

[9] That an attorney is not bound to proceed in a cause, unless he receives adequate advances from time to time for necessary disbursements, upon reasonable notice to his client, see 4 Ben. P. C. 52.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
85. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties[1].	Three years...	The close of the year[2] in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86. On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person[3].
87. By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto	When the insurers elect to avoid the policy.
88. Against a factor for an account.	Ditto	When the account is, during the continuance of the agency, demanded and refused[4], or, where no such demand is made, when the agency terminates.
89. By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto	Ditto[5].
90. Other suits by principals against agents for neglect or misconduct.	Ditto	When the neglect or misconduct becomes known to the plaintiff[6].
91. To cancel or set aside an instrument not otherwise[7] provided for[8].	Ditto	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him[9].

[1] i.e. where the dealings between the parties are such that sometimes the balance may be in favour of one party and sometimes of the other, 6 Bom. 138: 3 All. 523: 5 Cal. 763; and see 6 Cal. 447, where Garth C.J. thought that art. 85 applies to cases where an account has been going on between *A* and *B*, and balances have been struck from time to time showing the amount due from *A* to *B*, and that the suit to which art. 85 applies is one brought by *B* against *A* for the balance due to *B* on that account. See also 10 Mad. 199 and 259, where the agent alone kept a debit and credit account.

[2] 5 Ben. 550.

[3] 6 Bom. A. C. J. 34.

[4] i.e. expressly refused; but see 3 C. L. R. 446.

[5] See 5 Cal. 692, 698.

[6] Otherwise in England, *Howell* v. *Young*, 5 B. & C. 259.

[7] See arts. 44, 92, 93, 125, 126.

[8] 3 All. 846. Art. 91 refers to suits under the Specific Relief Act (I of 1877), sec. 39; see 5 All. 323; 6 All. 76. Where the substantial relief sought is the recovery of immoveable property, and the setting aside an instrument is merely incidental, art. 144 is inapplicable, 6 All. 261, and see 1 All. 409: 5 All. 79: 5 Cal. 363.

[9] The High Court at Allahabad

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
92. To declare the forgery of an instrument issued or registered.	Three years...	When the issue or registration becomes known to the plaintiff[1].
93. To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	The date of the attempt[2].
94. For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95. To set aside a decree obtained by fraud, or for other relief on the ground of fraud[3].	Ditto	When the fraud becomes known to the party wronged[4].
96. For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff[5].
97. For money paid upon an existing consideration which afterwards falls.	Ditto	The date of the failure.
98. To make good out of the general estate of a deceased trustee the loss[6] occasioned by a breach of trust.	Ditto	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99. For contribution by a party who has paid[7] the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto	The date of the plaintiff's advance in excess of his own share.
100. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution[8].	Ditto	When the right to contribution accrues.

thinks that these words must be construed to mean 'when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit,' 3 All. 396, and see 6 All. 207.

[1] 4 Cal. 209.

[2] L. R., 8 I. A. 197; S. C., 8 Cal. 178: the first attempt, if more than one, 4 Cal. 209.

[3] See 25 Suth. Civ. R. 476 and 3 Cal. 300 and 504 on the corresponding art. of Act IX of 1871.

[4] 5 All. 296: 9 Mad. 457: 11 Bom. 119. The knowledge here meant is not mere suspicion, but such definite knowledge as will enable the person defrauded to seek his remedy in Court, 6 All. 415. As to the effect of fraudulent concealment by the defendant, see sec. 18 supra.

[5] This article was intended to refer to suits which might have been brought in the Court of Chancery, and not to the common-law action of money had and received. Suits to recover money paid by mistake come under art. 62. But see 6 Mad. 344 and 12 Cal. 533.

[6] i.e. the loss of the specific property mentioned in sec. 10: see 9 Bom. 400 and Act II of 1882, sec. 23, supra vol. I. p. 848.

[7] 4 Cal. 529.

[8] See Act II of 1882, sec. 27 (vol. I. supra, p. 851).

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
101. For a seaman's wages.	Three years...	The end of the voyage during which the wages are earned.
102. For wages not otherwise expressly provided for by this schedule[1].	Ditto	When the wages accrue due.
103. By a Muhammadan for exigible dower (*mu'ajjal*).	Ditto	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce[2].
104. By a Muhammadan for deferred dower (*mu'wajjal*).	Ditto	When the marriage is dissolved by death or divorce.
105. By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor reenters on the mortgaged property[3].
106. For an account and a share of the profits of a dissolved partnership[4].	Ditto	The date of the dissolution[5].
107. By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto	The date of the payment.
108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease[6].	Ditto	When the trees are cut down.
109. For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant[7].	Ditto	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession[8].

[1] See arts. 4, 7, and 101.

[2] 6 Moo. I. A. 211; 11 Ben. 375: 15 Ben. 306.

[3] 6 All. 311.

[4] 14 Cal. 791, 792.

[5] Lindley, *Ptp.* ii, 980; 4 All. 437. The article does not apply to suits for recovery of a share of a partnership asset received by one partner after the dissolution. See 12 Bom. H. C. 97; 6 Bom. 628; *Knox* v. *Gye*, L. R., 5 H. L. 656. To such suits art. 62 or 120 applies

[6] 3 Suth. S. C. Ref. 9.

[7] 4 Cal. 625.

[8] The effect of this article is that

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
110. For arrears of rent	Three years...	When the arrears become due[1].
111. By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Ditto	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance[2].
112. For a call by a company registered under any Statute or Act.	Ditto	When the call is payable.
113. For specific performance of a contract[3].	Ditto	The date fixed for the performance, or if no such date is fixed[4], when the plaintiff has notice that performance is refused[5].
114. For the rescission of a contract[6].	Ditto	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115. For compensation for the breach of any contract, express or implied[7], not in writing registered[8] and not herein specially provided for[9].	Ditto	When the contract is broken, or (where there are successive breaches)[10] when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing)[11] when it ceases.

mesne profits can only be recovered for the three years next before the filing of the plaint, L. R., 11 Ind. App. 88.

[1] See (on Ben. Act VIII of 1869, sec. 29) 3 Cal. 6, 791, 817; 6 Cal. 325.

[2] *Toft* v. *Stephenson*, 5 D. M. G. 735.

[3] 2 Cal. 323: 6 All. 232. It has been held (5 All. 263) that this clause applies to suits for specific performance of awards, because the Specific Relief Act, sec. 30, declares that the provisions of chap. II of that Act as to the specific performance of contracts shall, mutatis mutandis, apply to awards. But this does not extend to provisions as to the limitation of suits respecting contracts.

[4] 2 Cal. 323: 5 Cal. 175: 3 Mad. 87.

[5] 5 Cal. 175. For a case to which art. 113 does not apply, see 2 All. 719.

[6] as between promisor and promisee, 3 All. 846.

[7] 3 All. 385.

[8] in British India: see sec. 3 supra.

[9] 11 Bom. 133, and see 3 Mad. 107: 5 Mad. 388.

[10] 10 All. 85. [11] 6 All. 457.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
	PART VII. *Six years.*	
116. For compensation[1] for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered[2].
117. Upon a foreign judgment as defined in the Code of Civil Procedure[3].	Ditto	The date of the judgment[4].
118. To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto	When the alleged adoption becomes known to the plaintiff[5].
119. To obtain a declaration that an adoption is valid.	Ditto	When the rights of the adopted son as such are interfered with.
120. Suit for which no period of limitation is provided elsewhere in this schedule[6].	Ditto	When the right to sue accrues.
	PART VIII. *Twelve years.*	
121. To avoid[7] incumbrances[8] or under-tenures in an entire estate sold for arrears of Government revenue, or in a *patní taluq* or other saleable tenure sold for arrears of rent.	Twelve years	When the sale becomes final and conclusive.

[1] See the Contract Act, sec. 73. The use of this word here excludes suits for specific performance (art. 113).

Art. 116 applies to suits to recover a specific sum due on a registered bond or other written contract, 6 Bom. 75: 3 All. 600: 4 All. 255: 6 Cal. 94: 3 Mad. 359; and to recover arrears of rent on a registered contract, 3 Mad. 76: 15 Cal. 221. As to written contracts registered in respect of only some of the parties, see 4 Mad. H. C. 366.

[2] 12 Cal. 357.

[3] sec. 2, supra, p. 468.

[4] 8 Suth. Civ. R. 31.

[5] 1 Bom. 248. This article, though it might bar a suit brought only for the purpose of setting aside the adoption, does not interfere with the right, which, but for it, a plaintiff has, of bringing a suit to recover possession of immoveable property within 12 years from the time the right accrued, L. R. 6, I. A. 113: 8 All. 644: 9 All. 256, 267.

[6] 3 All. 170, 172. Examples are: suits to enforce payment of money charged on *moveable* property: claims to the exclusive right of worshipping an idol, 4 Cal 683: 8 Cal. 807: 6 Ben. 352: suits to enforce the right of preemption in respect of a mortgage (by conditional sale) of a fractional share of an undivided mahál, 4 All. 218: suit for recovering instalments of a profession-tax, 3 Mad. 124. And see 6 Cal. 34 (to compel defendant to fill up a tank): 10 Bom. 483 (liquidator's suit for call).

That art. 120 (as regards suits to declare title) is not affected by art. 91, see 10 Mad. 213.

[7] 4 Cal. 860.

[8] See the definition of 'encumbrance' in the Bengal Tenancy Act, 1885, sec. 161.

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
122. Upon a judgment obtained in British India[1], or a recognizance[2].	Twelve years.	The date of the judgment or recognizance.
123. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto	When the legacy or share becomes payable or deliverable[3].
124. For possession of an hereditary office.	Ditto	When the defendant takes possession of the office adversely to the plaintiff[4]. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125. Suit during the life of a Hindú or Muhammadan female by a Hindú or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage[6].	Di	The date of the alienation[5].
126. By a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property.	Ditto	When the alienee takes possession of the property[7].
127. By a person excluded[8] from joint-family property[9] to enforce a right to share therein.	Ditto	When the exclusion becomes known to the plaintiff[10].

[1] See 7 Cal. 74; secus 8 Bom. 1, 13.

[2] i. e. the bond taken under the Criminal Procedure Code, sec. 91, 169, 170, 217, 469, or 497.

[3] 2 Cal. 45. This article applies only where the legacy or share is sought to be recovered as such from a person bound to pay it because he represents the estate of the deceased testator or intestate, 9 Cal. 81. It will be remembered that a legacy is not 'payable' until the executor has in his hands sufficient assets, *Faulkner* v. *Daniel*, 3 Hare, 199, 212.

[4] 1 Mad. 343: 9 Bom. H. C. 260: 6 Mad. H. C. 301: 2 Mad. 283.

[5] 3 Ben. A. C. 362: 1 All. 503.

[6] 10 Cal. 324.

[7] 5 Ben. Appx. 14.

[8] 10 All. 109. This word implies previous inclusion, 5 Cal. 938. As to the rule applicable to the purchaser of a share whose vendor has been excluded, see art. 136, and 11 Cal. 680, followed in 14 Cal. 544.

[9] 9 Cal. 241.

[10] L. R., 12 Ind. App. 112: 11 Cal. 777: 6 Bom. 741: 11 Bom. 216. As

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
128. By a Hindú for arrears of maintenance.	Twelve years.	When the arrears are payable[1].
129. By a Hindú for a declaration of his right to maintenance.	Ditto	When the right is denied.
130. For the resumption or assessment of rent-free land.	Ditto	When the right to resume or assess the land first accrues[2].
131. To establish a periodically recurring right[3].	Ditto	When the plaintiff is first refused[4] the enjoyment of the right[5].
132. To enforce payment[6] of money charged[7] upon immoveable property. *Explanation.*—The allowance and fees respectively called *málikána*[9] and *haqqs* shall, for the purpose of this clause, be deemed to be money charged upon immoveable property[10].	Ditto	When the money sued for becomes due[8].
133. To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Ditto	The date of the purchase.

to the former law, see 10 Moo. Ind. App. 511: 2 Mad. H. C. 347: 3 ibid. 99: 4 ibid. 354. As to a co-sharer holding after redemption, see 11 Bom. 422, following 7 Bom. 34.

[1] L. R., 10 I. A. 45.

[2] 8 Cal. 230.

[3] Such as a *palla*, or right to worship an idol in turn, 8 Cal. 807, following 4 Cal. 683.

[4] This implies a demand by or on behalf of the plaintiff.

[5] 7 Mad. 343.

[6] i.e. payment out of the property charged, see L. R., 12 I. A. 15: S. C., 7 All. 502 (on corresponding art. of Act IX of 1871): 6 All. 556: 6 Cal. 549: 12 Cal. 389: 10 Mad. 100: 10 Bom. 519. The decision in 6 Bom. 719, where a full bench held that art. 132 applied to a mortgagee's suit for a money decree, is no longer of authority. Interest for 12 years has been held recoverable under this article, 6 Bom. 719: 6 Mad. 417. But see 5 All. 461; and consider art. 63, which was intended to comprise suits for arrears of interest due on money charged on land.

[7] See the definition of 'charged' in the Transfer of Property Act, sec. 100 (supra, vol. I. pp. 797, 798). As to mortgagees' suits for foreclosure or sale, see infra, art. 147.

[8] 10 Mad. 509: 14 Cal. 730 (suit on hypothecation-bond to enforce payment by sale of property hypothecated), overruling 12 Cal. 111 and dissenting from 6 All. 551: 9 All. 158: 11 Bom. 313.

[9] 5 Cal. 921. As to the old law see L. R., 1 I. A. 34: 4 Ben. A. C. 29: 7 Suth. Civ. R. 336, col. 2: 9 ibid. 102: 19 ibid. 95.

[10] 15 Cal. 66: 5 Bom. 68. Money charged on the profits of a taluqa is charged on immoveable property, 7 All. 120. That the rule of *dámdupat* is not affected by the Limitation Acts, see 3 Bom. 312: 9 Bom. 235.

FIRST DIVISION. *Suits.*	*Description of suit.*	*Period of limitation.*	*Time from which period begins to run.*
134.	To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration[1].	Twelve years.	The date of the purchase.
135.	Suit instituted in a Court not established by Royal Charter by a mortgagee[2] for possession of immoveable property mortgaged.	Ditto	When the mortgagor's right to possession determines[3].
136.	By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto	When the vendor is first entitled to possession[4].
137.	Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto	When the judgment-debtor is first entitled to possession[5].
138.	By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto	The date of the sale[6].
139.	By a landlord to recover possession from a tenant.	Ditto	When the tenancy is determined[7].

[1] This is without reference to the question of good faith on the part of the purchaser, 9 Bom. 475: see 9 All. 97. Purchasers of trust-property are entitled to the protection afforded by arts. 133 and 134 without showing that they bought without notice of the trust. Where the plaintiff is a remainderman or reversioner, article 140 would apply.

[2] i.e. an usufructuary mortgagee, 6 All. 559: see 14 Cal. 674, where the mortgagee bought a share of the mortgaged property.

[3] 10 Cal. 68.

[4] 12 Cal. 197 (where the High Court, for some unstated reason, thought that art. 136 did not apply to a suit against the vendor himself upon his recovering possession): 4 Bom. 89

[5] If in the case of a sale out and out the vendor remains in possession without the purchaser's consent, that possession is adverse to the purchaser, *Tew* v. *Jones*, 13 M. & W. 12, per Rolfe J. See 11 Cal. 231, where this doctrine was applied to a case under arts. 136, 137.

[6] i.e. an actual sale, not its confirmation, 14 Cal. 644. See 10 Cal. 402: 9 Cal. 603: 4 Cal. 103 and 216: 6 All. 75.

[7] Article 139 applies only where there is an actual letting, 5 Cal. 679: it refers to suits in respect of tenancies in which the leases have expired or in respect of tenancies at will terminable by due notice; but not to cases in which the plaintiff seeks to recover a tenure permanent in its nature, 9 Cal.

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
140. By a remainderman, a reversioner (other than a landlord[1]), or a devisee, for possession of immoveable property.	Twelve years.	When his estate falls into possession[2].
141. Like suit by a Hindú or Muhammadan entitled to the possession of immoveable property on the death of a Hindú or Muhammadan female[3].	Ditto	When the female dies[4].
142. For possession of immoveable property, when the plaintiff while in possession of the property has been dispossessed or has discontinued the possession[5].	Ditto	The date of the dispossession or discontinuance[6].
143. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto	When the forfeiture is incurred or the condition is broken[7].
144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for[8].	Ditto	When the possession of the defendant becomes adverse to the plaintiff[9].

417. The burden of proving the determination of the tenancy rests on the defendant, i.e. the person who resists the right to show that the tenancy has determined, 8 Mad. 427: 4 Cal. 314: 2 All. 517. A defendant acknowledging himself to be the plaintiff's tenant does not thereby preclude himself from pleading limitation, 7 Bom. 96, following 12 Ben. 274.

[1] i.e. a landlord as such suing his tenant, 9 Cal. 370.

[2] 9 Cal. 934: 14 Cal. 401 and 801. So in England under 3 & 4 Wm. IV, c. 27, sec. 4.

[3] He must be *in esse* at the time of her death, 5 Cal. 938.

[4] 4 Ben. A. C. J. 136: 8 Cal. 443: 11 Cal. 795: 12 Cal. 594: 14 Cal. 401: 8 All. 644.

[5] 5 All. 490. *A* is 'dispossessed' when *B* comes in and drives out *A* from possession. *A* 'discontinues possession' when he goes out and is followed into possession by *B*, *Rains* v. *Buxton*, 14 Ch. Div. 539–540; and see *Leigh* v. *Jack*, 5 Ex. Div. 264.

[6] In 6 Cal. 315 Garth C.J. said that the words 'dispossession' and 'discontinuance' apply only to cases where the owner of land has, either by his own act or that of another, been deprived altogether of his dominion over the land itself or the receipt of its profits. Art. 142 was suggested by the English statute 3 & 4 Wm. IV, c. 27, sec 4, and the meaning is this: when there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without regard to the intention with which, or the circumstances under which, possession was discontinued, 5 Cal. 683. That dispossession partly effected by fraud does not, for the purpose of art. 142, differ from other dispossession, see 3 Cal. 504.

[7] See 8 Cal. 224.

[8] For cases relating to this article see 2 All. 719: 8 All. 86: 5 Cal. 363: 12 Cal. 197 and 493: 13 Cal. 203: 14 Cal. 109: 9 Mad. 482: 10 Mad. 116.

[9] *Adverse possession* is where some

FIRST DIVISION. *Suits.*	*Description of suit.*	*Period of limitation.*	*Time from which period begins to run.*
		PART IX. *Thirty years.*	
145.	Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years	The date of the deposit or pawn [1].
146.	Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto	When any part of the principal or interest was last paid on account of the mortgage debt [2].
		PART X. *Sixty years.*	
147.	By a mortgagee for foreclosure or sale [3].	Sixty years.	When the money secured by the mortgage becomes due [4].

person other than the true owner holds immoveable property on his own behalf, the true owner having a right to immediate possession of the property, 4 Cal. 329, and see 4 Bom. 89.

A, a Hindú widow, agrees with her co-sharer *B* that the property to which they are jointly entitled shall remain in equal shares in their joint possession and enjoyment, but that she shall have no power to alienate the same property, and that, after her death, it shall pass to *B*. In 1845 *A* sells her share to *C*, and delivers possession to him. *A* dies in 1862. As regards *B*'s heirs there is no adverse possession until *A*'s death in 1862, L. R., 8 I. A. 210. See as to the beginning of adverse possession, L. R., 7 I. A. 1: L. R., 12 I. A. 188; see also 7 Cal. 394 and 3 All. 24.

Where the Collector in possession of *A*'s land for the purpose of protecting the Government revenue pays the surplus proceeds of the land to *B*, an adverse claimant, the Collector's possession does not thereby become adverse to *A*, L. R., 9 I. A. 99: S. C., 5 All. 1.

For other cases in which possession has been held not to be adverse see 2 Bom. 413 (referrible to lawful title): 3 Bom. 774, 781 (derivative in commencement): 8 Ben. 93 (occupation of one joint tenant): 6 Cal. 311 (occupation allowed on ground of charity or relationship).

That the adverse possession of the defendant must be of the same nature as the possession sought by the plaintiff, see 3 All. 24.

In the case of a lessor, possession does not become adverse until after the determination of the tenancy, even though the tenant has purported to sublet or to sell the property leased, or has been evicted by a stranger, 8 Suth. Civ. R. 55, or has omitted to pay his rent, 7 Suth. Civ. R. 400: 7 Bom. 34. That the possession of a tenant by sufferance is not adverse to the landlord, see 8 Mad. 426. But there may be adverse possession where the defendants set up a pretended tenancy which the plaintiff throughout denied. See 7 Bom. 99, following 12 Ben. 280, per Mitter J.

[1] This article contemplates a deposit or pawn of an article to be returned *in specie*. It therefore does not apply where the property is money deposited with a banker.

[2] See 14 Moo. I. A. 150. When there has been no payment on account of the mortgage debt, the twelve years' rule applies, 4 Cal. 283.

[3] See Transfer of Property Act, secs. 67, 88.

[4] This article has been much dis-

FIRST DIVISION. *Suits.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
148. Against a mortgagee to redeem or to recover possession of immoveable property[1] mortgaged[2].	Sixty years ...	When the right to redeem[3] or to recover possession accrues[4]. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149. Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person[5].

SECOND DIVISION. *Appeals.*

SECOND DIVISION: APPEALS.

Description of Appeal.	*Period of Limitation.*	*Time from which period begins to run.*
150. Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.

cussed. See 6 All. 551, 554: 10 Mad. 509, 513: 10 Bom. 519, 526, and 592: 12 Cal. 111. But in 14 Cal. 731 (overruling 12 Cal. 111 and dissenting from 6 All. 551) it was decided that art. 147 was intended to provide for suits based on an 'English mortgage' for foreclosure or sale in the alternative.

[1] 2 Mad. 226 The right to officiate as priest at the funeral ceremonies of Hindús has been held 'immoveable property,' within the meaning of this article, 10 Cal. 73, per Mitter J., the learned judge ignoring the definition of 'immoveable property' in the General Clauses Act, sec. 2, cl. (5).

[2] The Bombay High Court holds that the corresponding clause of Act XIV of 1859 applies to a suit by a mortgagor to recover the mortgaged property from a defendant who does not claim under the mortgagee, see 12 Bom. H. C. 180. Secus 2 Mad. 226, which seems right.

[3] 2 Mad. 314: 5 Bom. 22. As to *otti* and *kánom* mortgages in Malabar see 1 Mad. H. C. 261: 2 Mad. 45; as to *iladárawára* mortgages in Canara, 4 Mad. 113.

[4] whichever event first happens.

[5] 9 Mad. 175: 8 Cal. 230.

SECOND DIVISION. *Appeals.*	*Description of appeals.*	*Period of limitation.*	*Time from which period begins to run.*
151.	From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or the Chief Court of the Panjáb[1], in the exercise of its original jurisdiction.	Twenty days	The date of the decree[2] or order.
152.	Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days..	The date of the decree or order appealed against.
153.	Under the same Code, section 601, to a High Court.	Ditto	The date of the order refusing the certificate.
154.	Under the Code of Criminal Procedure, to any Court other than a High Court.	Ditto	The date of the sentence or order appealed against.
155.	Under the same Code, to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.	Under the Code of Civil Procedure[3], to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days	The date of the decree or order appealed against[4].
157.	Under the Code of Criminal Procedure, from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

THIRD DIVISION: APPLICATIONS.

THIRD DIVISION. *Applications.*	*Description of Application.*	*Period of limitation.*	*Time from which period begins to run.*
158.	Under the Code of Civil Procedure, to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.	For leave to appear and defend a suit under chapter XXXIX of the Code of Civil Procedure.	Ditto	When the summons is served.
160.	For an order under section 629 of the same Code, restoring to the file a rejected application for review.	Fifteen days	When the application for review is rejected.

[1] Act XVII of 1877, sec. 18.

[2] i.e. (according to the Civil Procedure Code, sec. 205) 'the day on which the judgment was pronounced,' 10 Cal. 659, 661, where Garth C. J. suggests that the time allowed for an appeal from a decree should count from the signing of the decree, and not from its date.

[3] 13 Cal. 221.

[4] See sec. 5, and 15 Cal. 242.

THIRD DIVISION. *Applications.*

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
160A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Fifteen days	The date of the decree or order.
161. [*Now* 173A, Act VII of 1888.]		
162. For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay, or the Chief Court of the Panjáb[1], in the exercise of its original jurisdiction.	Ditto	The date of the decree or order.
163. By a plaintiff, for an order to set aside a dismissal by default.	Thirty days	The date of the dismissal.
164. By a defendant, for an order to set aside a judgment *ex parte.*	Ditto	The date for executing any process for enforcing the judgment[2].
165. Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto	The date of the dispossession[3].
166. To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court[4].	Ditto	The date of the sale.
167. Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto	The date of the resistance, obstruction or dispossession[5].'

[1] Act XVII of 1877, sec. 18.

[2] 6 All. 144. 'Any process' here means 'the first process.' When therefore property has been attached, the date on which the attachment was made, and not the date of the execution-sale, is the date intended by this article, 7 All. 345, 353. In 2 Cal. 123 it was held that notice under sec. 248 of the Code is not sufficient 'process for enforcing.'

[3] 3 Cal. 729: 5 Cal. 331: 7 Cal. 91: 2 Bom. 673.

[4] This applies only to applications made under sec. 294 or sec. 311 of the Civ. Proc. Code, 9 Bom. 471.

[5] complained of, 5 Mad. 113, and see 11 Bom. 473.

THIRD DIVISION. *Applications.*

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
168. For re-admission of an appeal dismissed for want of prosecution.	Thirty days .	The date of the dismissal.
169. For a re-hearing of an appeal heard *ex parte* in the absence of the respondent.	Ditto	The date of the decree in appeal.
170. For leave to appeal as a pauper.	Ditto	The date of the decree appealed against.
171. Under section 371 of the Code of Civil Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.	Sixty days ...	The date of the order for abatement or dismissal.
172. By a purchaser at an execution-sale, to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto	The date of the sale.
173. For a review of judgment[1], except in the cases provided for by No. 160 A and No. 162.	Ninety days	The date of the decree or order.
173A. For the issue of a notice under section 258 of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Ditto	When the payment or adjustment is made.
174. By a creditor of an insolvent judgment-debtor, under section 353 of the Code of Civil Procedure.	Ditto	The date of the publication of the schedule.
175. For payment of the amount of a decree by instalments[2].	Six months ...	The date of the decree.
175A. Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.	Ditto	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.

[1] i.e. under the Civil Procedure Code, c. xlvii; not under sec. 206: see 6 Cal. 22.

[2] under the Civil Procedure Code, sec. 210.

THIRD DIVISION. *Applications.*

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
175B. Under section 366 of the Code of Civil Procedure by a defendant or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.	Six months ...	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.
175C. Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 582 of the same Code to have the legal representative of a deceased plaintiff-respondent or defendant-respondent made a plaintiff-respondent or defendant-respondent.	Ditto	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant-respondent.
176. Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court[1].	Ditto	The date of the award[2].
177. For the admission of an appeal to Her Majesty in Council.	Ditto	The date of the decree appealed against[3].
178. Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230[4].	Three years...	When the right to apply accrues[5].

[1] This article applies to (*a*) applications by a party to compel an arbitrator to sign an award in a suit or to cause it to be filed, and (*b*) applications by a person interested in an award made without the intervention of the Court that the award be filed. It does not apply to the act of an arbitrator in handing in an award to the proper officer for the purpose of the award being filed, 7 Cal. 333.

[2] That is, the time when it is given to the parties, when it becomes an award and is handed over to them, so that they may be able to give effect to it, 9 Cal. 578, following an opinion of Couch C.J. in 21 Suth. Civ. R. 248.

[3] 10 Mad. 373.

[4] See 5 Cal. 139: 8 Cal. 837: 14 Cal. 50: 3 Bom. 433: 5 Bom. 29, 202 and 206: 8 Bom. 257: 4 All. 23: 5 All. 459 and 596: 6 All. 23 and 142: 7 All. 371: 10 Mad. 22 and 66. This article does not refer to applications for probate or letters of administration, 6 Cal. 707; to correct errors in a decree, 11 Bom. 284: 9 All. 364; to revive suits and restore them to the board, 6 Cal. 60; for a certificate of sale, 4 Mad. 172, 6 Bom. 586: nor to the other applications referred to in the note to the preamble, supra, p. 957.

[5] The right to apply for the revival of proceedings, which have been suspended by injunction or other like cause, accrues, as a rule, on the date on which the injunction or other obstruction is removed, 5 Bom. 35.

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THIRD DIVISION. *Applications.*

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
179. For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.	Three years; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal[1]) the date of the final decree or order of the Appellate Court[2], or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the application next hereinafter mentioned has been made[3]) the date of applying[4] in accordance with law[5] to the proper Court[6] for execution, or to take some step in aid of execution[7], of the

[1] i.e. from the decree or order of which execution is sought, 2 All. 273: 5 All. 236. But where there has been merely an application for appeal, which was rejected owing to the memorandum of appeal not being sufficiently stamped, there has *not* been 'an appeal,' 6 All. 438. An order rejecting an appeal on the ground of non-payment of part of the court-fee has been held a 'final order,' 7 All. 887.

[2] 2 Mad. 174: 6 All. 14: 8 All. 573: 9 Cal. 100: 14 Cal. 26, 348. 'Appeal' here includes appeals to the Queen in Council, 2 All. 763, and 'appellate court' means the court or courts to which the appeal mentioned in art. 179 has been preferred, 9 Cal. 100.

[3] orally or in writing, 3 All. 139.

[4] This requires that the decree-holder should make a direct and independent application for execution of his own decree on his own account, 7 All. 898. The dismissal of a duly made application does not prevent it furnishing a starting-point for a new period of limitation, 11 Bom. 467.

[5] 4 All. 34. Insufficient stamping does not render the application illegal, 6 Mad. 181; and see *ibid.* 250, where the application had been returned for amendment; but an application by a mere benámídár is not 'in accordance with law,' 9 Cal. 633.

[6] See Expl. II, infra.

[7] The following applications have been held to be 'steps in aid':—Oral application to fix a fresh date for execution-sale, 3 All. 139. Application to have the execution-case struck off, 3 All. 321 (*sed qu.*). Application praying for postponement of the execution-sale, 3 All. 757 (*sed qu.*). Application to execute an attached decree, 7 All. 382. Application by one of several decree-holders, 3 Mad. 79. Application for certificate that copy of revenue-register is necessary, 5 Mad. 141. Application to issue proclamation of sale in respect of property already attached, 10 Cal. 851. Application (where a decree has been transferred for execution) to return the decree to the Court which passed it for further execution, 6 Mad. 81. Asking Court that a lot attached should be sold in its entirety, 7 Mad. 306. Application by decree-holder for the proceeds of the execution-sale, 6 All. 366, but see 10 Cal. 549. Application in the course of an investigation into an objection to attachment of

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
179. For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230—*continued.*	Three years; or, where a certified copy of the decree or order has been registered, six years — *continued.*	decree or order[1], or 5. (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248[2], or 6. (where the application is to enforce any payment which the decree or order directs to be made at a certain date[3]) such date[4]. *Explanation I.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4

property to have witnesses summoned, 5 All. 344. Application that judgment-debtor's objections to sale be disallowed and sale be confirmed, 5 All. 576. Application by decree-holder to have the receipt of certain sums paid out of court certified, 9 All. 9. Application by judgment-creditor to bring an execution-proceeding on the file and record his certificate of a payment by a judgment-debtor, 12 Cal. 608. Application by judgment-creditor to allow sale of attached property subject to a mortgage, 15 Cal. 363.

But opposition by judgment-creditor to appeal by judgment-debtor is not an application 'to take some step,' &c., 5 Cal. 595: nor is an application by a decree-holder for postponement of an execution-sale, 3 All. 757; and see 7 Bom. 296, where the execution-process applied for is distinct in its nature from a former one: nor is the mere paying court-fee in respect of execution-proceedings, 9 Cal. 730: nor is an application by a judgment-creditor to take money out of court deposited by the judgment-debtor, 8 Cal. 89.

[1] 11 Bom. 348: 12 Cal. 441. This clause must be read subject to the rules contained in secs. 374 and 647 of the Code of Civil Procedure, 6 Bom. 681; 7 All. 361.

[2] 2 Mad. 1, where the notice was issued under the corresponding section (216) of the Code of 1859.

[3] An actual date must have been specified either absolutely or in relation to some contingency: it is not enough that the payment has been ordered to be made monthly or annually, 7 Mad. 83.

[4] 4 All. 84: 5 All. 292: 7 Cal. 60. As to decrees payable by instalments, there is no provision like that in art. 75 as to promissory notes and bonds. Therefore, a decree payable by annual instalments, with a proviso that, in default of payment of any one instalment, the whole amount of the decree shall become payable forthwith, is barred unless application for execution is made within three years from the date on which any one instalment fell due and was not paid. The payment of instalments subsequent to default in payment of the first

THIRD DIVISION. *Applications.*	*Description of application.*	*Period of limitation.*	*Time from which period begins to run.*
	179. For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230—*concluded.*	Three years; or, where a certified copy of the decree or order has been registered, six years — *concluded.*	of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against [1]. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all [2]. *Explanation II.*—'Proper Court' means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure

instalment at the date specified does not give the judgment-creditor a fresh starting-point, 2 Bom. 356, 359.

[1] Had it been intended that the legal representatives of a sole judgment-debtor or of jointly-liable judgment-debtors should have the benefit of a similar provision on the analogous grounds that they are only liable to the extent of the property in their possession, the Legislature would have extended this provision to them. The position, however, of several representatives of a sole judgment-debtor is very different *quoad* the decree-holder from that of several judgment-debtors with separate liabilities found by the decree, 3 All. 519, per Oldfield J.

[2] 9 Cal. 570.

THIRD DIVISION. *Applications.*

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
		or otherwise) to execute the decree or order.
180. To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction [1], or an order of Her Majesty in Council [2].	Twelve years.	When a present right to enforce the judgment, decree or order accrues to some person capable of realising the right: Provided that when the judgment, decree or order has been revived [3], or some part of the principal money secured thereby, or some interest on such money, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be [4].

[1] See 11 Bom. 138, where West J. held that art. 180 was applicable to a judgment entered under sec. 86 of the Indian Insolvent Act (11 & 12 Vic. c. 21), and 8 Cal. 218, where the order of Her Majesty in Council confirmed a decree of the Court below. In F. B. R. 506, the High Court of Bengal held that the Indian legislature had no power to limit the period during which the decrees (meaning orders) of the Queen in Council should be executed, as this would interfere with the prerogative. But this decision is hardly correct. The order in council merely prescribes what shall be the final decree in the cause, leaving it to be executed by the ordinary process of the courts in India. It finally ascertains and defines the rights of the parties without relieving them of the obligation imposed upon them by the general law of enforcing those rights with due diligence, a matter with which the prerogative has no concern, 14 Moo. I. A. 493.

[2] 8 Cal. 218.

[3] 6 Cal. 504 and see the Code of Civil Proc. sec. 248.

[4] Art. 180 is independent of sec. 230 of the Civil Procedure Code and not controlled by it, 6 Bom. 258; and so the Madras High Court has held that the period prescribed by this article is not affected by that section, 7 Mad. 540.

THE FIRST APPENDIX.

THE Acts contained in the following Appendix have this in common, that all of them are now used for the purpose of raising money for the general purposes of the State. The Court Fees Act and the Stamp Act are avowedly measures of taxation. But the Registration Act was intended solely to provide safeguards against fraud and to facilitate investigations of title; and it is to be regretted that the financial needs of the Indian Government render it impossible at present to apply the fees levied under that Act, after defraying its necessary expenses, to increasing the number of registration-offices, so as ultimately to have one within easy reach of every inhabitant of British India. If this were done, the Act might be extended to many classes of instruments now excluded from the operation of its compulsory clauses; and the result would be, not merely a diminution of fraud, but a sensible increase to the selling value of land throughout the country.

The Stamp Act.

The objects and structure of the four Acts printed in this Appendix being clear and simple, we may dispense with an introduction to each enactment, and here merely state, first, that the Stamp Act is founded partly on the Indian Act XVIII of 1869, partly on the English Statutes 33 & 34 Vic. cc. 97 and 98; and, secondly, that the Registration Act divides all documents into those that *must* be, and those that *may* be, registered: and declares that no document required to be registered shall affect any immoveable property comprised therein, or be received in evidence of any transaction affecting such property, unless it has been registered; and that, as a rule, where the registration of a document relating to land is optional, such document, if registered, takes effect against all unregistered documents relating to the same property. Where registration is optional, as it is when the purchase money is less than rs. 100, the ingenious natives of British India avail themselves of this last provision to sell the same property twice over to different people, once by an unregistered conveyance to *A*, giving him possession, and a second time, when *A* happens to be out of possession, by a registered conveyance to *B*[1]. All documents admitted to registration are copied, indexed, and authenticated by the registering officers. An intending purchaser or mortgagee can thus at once find every non-testamentary instrument affecting a particular piece of land, and an effectual safeguard is provided against the suppression, destruction and fraudulent alteration of title-deeds.

The Registration Act.

[1] See 8 Cal. 597

We may also mention the previous Indian laws dealing with the subjects to which the Stamp Act and the Registration Act respectively relate. The old Regulations and Acts as to court-fees[1] are now mere matters of curiosity[2]. But it is often necessary to ascertain whether an ancient document has been duly stamped, or whether a conveyance executed between 1793 and 1877 has been duly registered. For these purposes the following lists may be useful.

Former laws relating to stamps and registration.

I. Repealed Enactments relating to Stamps.

(a) *In Bengal.*

	Repealed by
Reg. VI of 1797, secs. 16, 21 ...	Act XXIX of 1871.
Reg. VII of 1800	Regs. I and XXIII of 1814.
Reg. XIII of 1806	Regs. I of 1814, X of 1829.
Reg. VIII of 1807	Reg. I of 1814.
Reg. VII of 1809	Ditto.
Reg. XII of 1812	Ditto.
Reg. XVI of 1813	Ditto.
Reg. I of 1814	Reg. X of 1829.
Reg. XXVI of 1814...	Act XII of 1873.
Reg. XVI of 1824	Reg. X of 1829.
Reg. XII of 1826 (Calcutta) ...	Act XXXVI of 1860.
Reg. X of 1829	Ditto.
Act XIX of 1858	Act XVIII of 1869.
Act XLI of 1858	Ditto.

(b) *In the Madras Presidency.*

Reg. VIII of 1808	Regs. XIII of 1816 and II of 1817.
Reg. II of 1813	Reg. XIII of 1816.
Reg. XIII of 1816	Act XXXVI of 1860.
Reg. II of 1825	Act VII of 1870 and Mad. Act II of 1869.

(c) *In the Bombay Presidency.*

Reg. XIV of 1815	Reg. I of 1827.
Reg. XVIII of 1827...	Act XXXVI of 1860.
Reg. XIV of 1831	Ditto.

[1] 'No institution fee has ever been paid in the Supreme Court, nor, under the original system of Lord Cornwallis, was there any such fee in the courts of the Company. The State defrayed the expense of all the judicial establishments. An institution fee, in the case of civil suits, was established by [Ben.] Regulation XXXVIII of 1795, not as a source of revenue, but, as appears from the preamble to the regulation, for the purpose of preventing vexatious litigation. By [Ben.] Reg. VI of 1797 the institution fees were converted into stamp duties; the preamble there assigns the same object; but adds also that of increasing the public revenue. The last purpose is the only one mentioned in [Ben.] Reg. I of 1814, which further regulates these payments' (*First Report of Commissioners appointed to consider the reform of the judicial establishments, etc. of India*, 1856, p. 22).

[2] Many of them are enumerated in the third schedule (now repealed) to Act VII of 1870. The first was Ben. Reg. XXXVIII of 1795.

(d) Throughout British India.

Act XIV of 1840, sec. 8	Act IX of 1872.
Act IX of 1842	Act IV of 1882 (in certain territories
Act XV of 1859, sec. 37	Act XVIII of 1869.
Act XXXVI of 1860	Act X of 1862.
Act XL of 1860	Ditto.
Act LI of 1860	Ditto.
Act X of 1862	Act VII of 1870.
Act XVIII of 1865	Ditto.
Act XXVI of 1867	Act X of 1877.
Act XVIII of 1869	Act I of 1879.

II. Repealed Enactments relating to Registration.

(a) In Bengal.

	Repealed by
Reg. XXXVI of 1793	Act XVI of 1864.
Reg. XXVIII of 1795 (Benares) ...	Ditto.
Reg. XVII of 1803 (ceded provinces)	Ditto.
Reg. VIII of 1805 (conquered and ceded provinces), s. 17.	Act XIX of 1873.
Reg. XII of 1805 (Katák), sec. 32	Act XVI of 1864.
Reg. XX of 1812	Ditto.
Reg. IV of 1824	Ditto.
Reg. VII of 1832, sec. 4	Act VI of 1871.
Act XI of 1851	Act XVI of 1864.

(b) In the Madras Presidency.

Reg. XVII of 1802	Act XVI of 1864.
Reg. XI of 1831	Ditto.

(c) In the Bombay Presidency.

Reg. IX of 1827	Act XVI of 1864.
Reg. XIII of 1828	Ditto.

(d) Throughout British India.

Act XXX of 1838	Act XVI of 1864.
Act I of 1843	Ditto.
Act XIX of 1843	Ditto.
Act IV of 1845	Ditto.
Act XVIII of 1847	Ditto.
Act XXIX of 1856	Ditto.
Act III of 1859, secs. 9 and 10 ...	Ditto.
Act XVI of 1864	Act XX of 1866.
Act IX of 1865	Ditto.
Act XX of 1866	Act VIII of 1871.
Act VIII of 1871	Act III of 1877.

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THE COURT FEES ACT, 1870.

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L. C. TARIAT

ACT No. VII OF 1870.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the* 11*th March* 1870.)

THE COURT FEES ACT, 1870.

[AS AMENDED BY ACTS XX OF 1870, XV OF 1872, XIII of 1875, V OF 1881, AND XVIII OF 1884.]

CHAPTER I.

PRELIMINARY.

Short title. Extent. Commencement.

1. This Act may be called 'The Court Fees Act, 1870:'
It extends to the whole of British India[1];
And it shall come into force on the first day of April 1870.

Repeal of enactments.

2. [*Repealed by Act XIV of* 1870.]

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

Levy of fees in High Courts on their original sides:

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute 24th & 25th of Victoria, chapter 104, section 15,

[1] Except the Gáro Hills District, the Khásí and Jaintiá Hills District and the Nágá Hills District, *Gazette of India*, 26 April, 1884, Pt. I, p. 164; and as to the Santál Parganas see Reg. III of 1872, sec. 8. Outside British India the whole Act (except chapters I and II and sched. III) is in force in the Haidarábád Assigned Districts and in the cantonments of Sikandarábád, Baroda (?), Dísah, and those in the Central Indian Agency. The whole Act is in force in the civil and military station of Bangalore, the parganas in the Rájputána Agency under British administration, and the Rájputána-Málwa State Railway.

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, 16, 20, and 21 of the second, schedule to this Act annexed;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several offices; shall be collected in manner hereinafter appearing[1].

in Presidency Small Cause Courts.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be conceived or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original criminal jurisdiction;

Fees on documents filed etc. in High Courts in their extraordinary jurisdiction:

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court;

in their appellate jurisdiction:

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

or in the exercise of jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

as Courts of reference and revision.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

[1] They may be denoted by adhesive stamps, *Gazette of India*, 23 April, 1870, Part I, p. 267.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed etc. in provincial Courts or in public offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer[1], unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document[2].

Computation of fees payable in certain suits.

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money:

i. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed:

for maintenance and annuities:

ii. In suits for maintenance and annuities or other sums payable periodically—acccording to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year[3]:

for other moveable property having a market-value:

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

iv. In suits—

for moveable property of no market-value:

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property.

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief:

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed[4],

for an injunction:

(*d*) to obtain an injunction,

for easements:

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts:

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal[5].

[1] 12 Cal. 542.

[2] 10 Bom. 610: 2 N. W. P. 418.

[3] 8 Mad. 384.

[4] 2 Bom. 219: 10 Bom. 60: 2 All. 720 and 869: 4 All. 320: 5 All. 331: 19 Suth. Civ. R. 18: 10 Cal. 380. Where no consequential relief is prayed see sched. II, no. 17, cl. (iii).

[5] 10 Cal. 599. The plaintiff is free to fix the amount, but he is subject to the provisions of sec. 11 infra, 9 Bom. 22.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section 31[1], shall apply as if, for the word 'claim,' the words 'relief sought' were substituted[2].

for possession of land, houses and gardens:

v. In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government[3],

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable:

(*b*) where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land:

Proviso as to Bombay Presidency.

Provided[4] that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—

(1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(2) where the land is held on permanent settlement, or on a settlement for any period exceeding thirty years, and pays the

[1] Now see Act XIV of 1882, sec. 54, supra, p. 497.

[2] See infra, the Suits Valuation Act, 1887, sec. 41.

[3] 8 Cal. 192.

[4] As to the object of this proviso, see 11 Bom. 541.

full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in adition to ten times the assessment, or the portion of assessment, so remitted:

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue.

for houses and gardens:

(*e*) Where the subject-matter is a house or garden—according to the market-value of the house or garden[1]:

to enforce a right of pre-emption:

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house, or garden in respect of which the right is claimed[1]:

for interest of assignee of land-revenue:

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint:

to set aside an attachment:

viii. In suits to set aside an attachment of land[2], or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest[3]:

to redeem:

ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose:

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money[4] expressed to be secured by the instrument of mortgage:

for specific performance.

x. In suits for specific performance—

(*a*) of a contract of sale—according to the amount of the consideration:

[1] 6 All. 488. See infra, the Suits Valuation Act, secs. 3 and 9.

[2] This does not include a house, 4 Bom. 515.

[3] 'The meaning of clause viii. evidently is that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land,' 1 Bom. 352.

[4] See 6 Bom. 324 (suit against mortgagee to recover portion of mortgaged property): 10 Bom. 41 (separate memoranda of appeal in redemption suit): 8 All. 438 (right to redeem of some of the mortgagors bought by mortgagee).

(*b*) of a contract of mortgage—according to the amount agreed to be secured:

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(*d*) of an award—according to the amount or value of the property in dispute:

xi. In the following suits between landlord and tenant:— between landlord and tenant.

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

(*d*) to contest a notice of ejectment[1].

(*e*) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of representing the plaint.

Memorandum of appeal against order as to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes[2], shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs v and vi, have or has been wrongly estimated[3], the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Procedure where nett profits or market-value wrongly estimated.

10. i. If in the result of any investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but if the estimation has been insufficient, the Court shall require the plaintiff

[1] See infra, the Suits Valuation Act, secs. 3 and 9.

[2] Act IX of 1870, also perhaps the local Acts providing for compulsory acquisition of land for roads, bridges, forests, embankments, drainage, salt-works, the establishment of a customs-line, and making navigable channels.

[3] This section is framed so as to discourage as much as possible local investigations for the purpose of valuing suits. The Court must in each case determine whether the investigation is necessary or expedient.

to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated:

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed[1]:

iii. Section 180[2] of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits[3] or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suits comprised the whole of the profits or amount so decreed shall have been paid to the proper officer[4].

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed[5].

Decision of questions as to valuations.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, shall be decided[6] by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit[7]:

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue[8], it

[1] at any stage at which the error may be detected, 2 Mad. 308. Such dismissal is a penalty, and cannot operate as *res judicata*, 8 All. 282, per Mahmúd J.

[2] See sec. 392 of the present Code, supra, p. 624.

[3] i.e. the parts of the suits in question relating to mesne profits, 12 Bom. 98.

[4] 2 All. 682.

[5] 12 Bom. H. C. 227.

[6] before the disposal of the case, 7 All. 528.

[7] 2 Bom. 145: 9 Bom. 355. But the decision may be revised by the High Court, 10 Bom. 610.

[8] Where the Court of first instance wrongly decides to the detriment of

shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply[1].

Refund of fee paid on memorandum of appeal.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 562 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable[2] had it been presented before such day[3].

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application[4] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (*b*) or clause (*d*).

the subject only, but to the advantage of the revenue, there is no appeal. Perhaps the less said as to the equity of such an enactment the better, 2 Bom. 224.

[1] 7 Cal. 348. An appellate court, in deciding the fee payable on a memorandum of appeal, is not bound by the decision of the court of first instance as to the stamp on the plaint, 6 Bom. 302.

[2] See sched. I, nos. 4 and 5, infra.

[3] 9 Mad. 134; but see 9 C. L. R. 479, where the ninetieth day fell during the vacation when the Court was closed. In the Panjab see Act XVIII of 1884, s. 72.

[4] As amended by Act XX of 1870.

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Additional fee where respondent takes objection to unappealed part of decree.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section 561 of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to[1].

Multifarious suits.

17. Where a suit embraces two or more distinct subjects[2], the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act[3].

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 45, paragraph 2.

Written examinations of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

[1] This section relates only to that class of cases in which a party losing substantially a portion of his claim is precluded from re-agitating and re-asserting that portion before the appellate court without paying the proper fee, 15 Suth. Civ. R. 511, per Paul J.

[2] distinct and separate causes of action, 1 All. 552: 2 All. 676, 682: 3 All. 131: 9 All. 252.

[3] But see the proviso in sched. I, art. 1.

ii. Declarations mentioned in section 118 and section 164[1] of the Code of Civil Procedure.

iii. Written statements called for by the Court after the first hearing of a suit[2].

iv. Plaint presented to a military Court of Requests[3] and petition for execution of a decree of such Court.

v. Plaints in suits tried by Village Munsifs[4] in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchâyats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. 12, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

[1] These sections have not been re-enacted by the present Code.

[2] 5 Bom. 400.

[3] See Act VIII of 1887 and 44 & 45 Vic. c. 58, s. 148.

[4] See Mad. Reg. IV of 1816.

xvi. Petition, application, charge, or information respecting any offence, when presented, made or laid to or before a Police officer, or to or before the Heads of Villages[1] or the Village Police[2] in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers[3].

xviii. Complaint of a public servant (as defined in the Indian Penal Code[4]), a municipal officer, or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the chaukídárí assessment under Act No. XX of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes[5].

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (*to ascertain, regulate, and record certain tenures in Chutia Nágpur*).

xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48[6].

CHAPTER III A[7].

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19 A. Where any person on applying for a probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted,

[1] Mad. Regs. XI of 1816 and IV of 1821, sec. 6.

[2] Bom. Act VIII of 1867, secs. 14, 15, 16.

[3] 10 Cal. 61.

[4] Supra, vol. I. pp. 95-97.

[5] See above, p. 1017, note 2.

[6] See Act XV of 1872, sec. 2.

[7] This chapter, founded on 48 Geo. III. c. 149, sec. 35, and 55 Geo. III, c. 184, secs. 40, 41, 42, 43, 51, was inserted in the Court Fees Act by Act XIII of 1875, sec. 6.

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion [1].

Relief where debts due from a deceased person have been paid out of his estate.

19 B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount of value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances [2].

Relief in case of several grants.

19 C. Whenever such [3] a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is

[1] From 55 Geo. III, c. 184, sec. 40.

[2] From 55 Geo. III, c. 184, sec. 51.

[3] The insertion of this word is a clerical or typographical error.

made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates[1].

Probates declared valid as to trust-property though not covered by Court-fee.

19 D. The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration[2].

Provision for case where too low a court-fee has been paid on probates, etc.

19 E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon[3].

Administrator to give proper

19 F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause

[1] See Financial Department Notification No. 2623, *Gazette of India*, 25 April, 1874, p. 264.

[2] 48 Geo. III, c. 149, sec. 35.

[3] 55 Geo. III, c. 184, sec. 41.

the same to be duly stamped in manner aforesaid until the Administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained[1].

security before letters stamped under sec. 19 E.

19 G. Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April 1875, or after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee[2].

Executors etc. not paying full Court-fee on probates etc. within six months after discovery of underpayment.

19 H. The provisions of sections 19 A to 19 G (both inclusive) shall, *mutatis mutandis*, apply to certificates granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX of 1864 (*for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*) and to the holders of such certificates.

Secs. 19 A to 19 G applied to certificates under Acts XL of 1858 and XX of 1864.

CHAPTER IV.

PROCESS FEES.

20. The High Court[3] shall, as soon as may be, make rules as to the following matters:—

Rules as to costs of processes.

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue[4] Courts established within the local limits of such jurisdiction:

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

[1] 55 Geo. III, c. 184, sec. 42.

[2] 55 Geo. III, c. 181, sec. 43.

[3] See also in Bombay, Act XIV of 1869, sec. 42, and in Burma, Act XVII of 1875, secs. 68, 74, and Reg. VIII of 1886, sec. 88 (2) (*a*).

[4] In the Panjáb, the words 'and Revenue' are repealed by Act XVII of 1887.

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.

All such rules, alterations, and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor General of India in Council, be published in the local official Gazette [1], and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Tables of process-fees.

21. A table in the English and vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and subordinate Courts.

22. Subject to rules to be made by the High Court and approved by the Local Government and the Governor General of India in Council, every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in provincial Small Cause Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge [2].

Number of peons in Revenue Courts.

23. Subject to rules to be framed by the Chief Controlling Revenue Authority and approved by the Local Government and Governor General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him [3].

Process served under this chapter to be held process under Civil Procedure Code.

24. Every process served or executed under this chapter shall be held to be a process within the meaning of section 188 [4] of the Code of Civil Procedure, and of section 2 [5] of Act No. XXIII of 1861 (*to amend Act VIII of* 1859).

[1] See Macpherson's *Lists*, pp. 99, 682 (Madras); 195, 196, 683 (Bombay); 336, 337 (Lower Provinces); 419, 420 (N. W. Provinces); 456 (Panjáb); 489 (Oudh); 506 (Central Provinces); 527, 528 (British Burma).

[2] To be construed as referring to the Provincial Small Cause Courts Act, 1887, see Act IX of 1887, sec. 2, cl. (3).

[3] In the Panjáb this section is repealed by Act XVII of 1887.

[4] not re-enacted in the present Code.

[5] sec. 93 of the present Code: see also sec. 636.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps. Collection of fees by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed, or adhesive, or partly impressed and partly adhesive, as the Governor General of India in Council may, by notification in the *Gazette of India*, from time to time direct[1]. Stamps to be impressed or adhesive.

27. The Local Government may, from time to time, make rules for regulating— Rules for supply, number, renewal and keeping accounts of stamps.

(*a*) the supply of stamps to be used under this Act,

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act,

(*c*) the renewal of damaged or spoiled stamps, and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law[2].

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped[3]. Stamping documents inadvertently received.

But if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document being stamped accordingly[4], the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp. Amended document.

[1] See *Gazette of India*, 21 April, 1883, Part I, p. 189.

[2] See Macpherson's *Lists*, 1884, pp. 99, 100 (Madras); 199, 200 (Bombay); 337, 338 (Bengal); 432 (N. W. Provinces); 457 (Panjáb); 507 (Central Provinces); 528 (British Burma); 573 (Coorg); 586 (Ajmer and Merwára); 646, 647 (Assam).

[3] 2 All. 682.

[4] But such an order cannot be passed after the decision of the case to which the question of the payment of court fees relates, 7 All. 528.

Cancellation of stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS

Repayment of fees paid on applications to Criminal Courts.

31. i. Whenever an application or petition containing a complaint or charge of an offence[1], other than an offence for which Police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition[2].

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

Amendments of Act VIII of 1859, ss. 308, 309, 371, 373.

32. The Code of Civil Procedure, sections 308 and 309[3], shall be read as if, for the words 'stamp-duty' and 'stamps,' the words and figures 'fees chargeable under the Court Fees Act, 1870,' were substituted; section 371[4] of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee,' were substituted; and section 373[5] of the same Code shall be read as if, for the words 'on a stamp paper of the value,'

[1] This does not include illegal seizure and detention of cattle, 8 Bom. H. C. Cr. 22: 7 Mad. 345.

[2] Such order is an integral part of the sentence, 5 Mad. H. C. Rulings, xxviii; and see 8 Bom. H. C. Cr. 22.

[3] secs. 410, 411 of the present Code.

[4] not re-enacted in the present Code; but see sec. 588.

[5] sec. 587 of the present Code.

the words 'and shall be chargeable with the fee,' were substituted; and as if, for the words 'for the stamps,' the words 'the fees,' were substituted.

Admission in criminal cases of documents for which proper fee has not been paid.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Rules for sale of stamps.

34. In the General Stamp Act, 1869 [1], section 48 shall be read as if, for the words and figures 'Act No. XXVI of 1867 (*to amend the law relating to Stamp Duties*),' the words and figures 'The Court Fees Act, 1870,' were substituted.

Power to reduce or remit fees.

35. The Governor General of India in Council may from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed [2], and may in like manner cancel or vary such order.

Saving of fees to certain officers of High Court.

36. Nothing in chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

SCHEDULE I.

Ad valorem fees.

Number.		*Proper Fee.*
1. Plaint [3] or memorandum of appeal [4] (not otherwise provided for in this Act [5]) presented to any Civil or Revenue Court, except those mentioned in section 3 [6].	When the amount or value of the subject-matter in dispute does not exceed five rupees ...	Six annas.
	When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees	Six annas.

[1] Repealed by Act I of 1879.

[2] See a list of twenty-four notifications under this section in Macpherson's *Lists of Enactments in force in British India*, Calcutta, 1884, pp. 41–46, 681.

[3] The court fee payable on a claim for set-off is the same as for a plaint, 8 All. 396. But in the case of an application to file an award, the fee is that fixed for other applications, 10 Cal. 11.

[4] 10 Bom. 238.

[5] 14 Suth. Civ. R. 21.

[6] To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this schedule.

SCHEDULE I.	*Number.*		*Proper Fee.*
Ad valorem fees.	1. Plaint *&c.*—(*continued*).	When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
		When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees	Five rupees.
		When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ...	Ten rupees.
		When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees ...	Fifteen rupees.
		When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Twenty rupees.
		When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees ...	Twenty rupees.
		When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Twenty-five rupees.
		Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees[1].	

[1] 3 All. 108.

Number.		*Proper Fee.*
2. Plaint in a suit for possession under Act No. XIV of 1859 (*to provide for the limitation of suits*), section 15[1].	... .	A fee of one-half the amount prescribed in the foregoing scale.
3. Petition under the Indian Registration Act, section 53[2].		
4. Application for review of judgment[3], if presented on or after the ninetieth day from the date of the decree.	... ...	The fee leviable on the plaint or memorandum of appeal[4].
5. Application for review of judgment[5], if presented before the ninetieth day from the date of the decree[6].	... .	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other judicial or executive authority—	
	(*a*) If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas.
	(*b*) If such amount or value exceeds fifty rupees ...	Eight annas.
	When such judgment or order is passed by a High Court ...	One rupee.

SCHEDULE I.

Ad valorem fees.

[1] Repealed (except as to the Scheduled Districts) by the Specific Relief Act, I of 1887, sec. 2, supra, vol. I. p. 945.

[2] 6 Mad. H. C. 351. The Registration Act referred to is XX of 1866, which was repealed by Act VIII of 1871, except as to agreements recorded under sec. 52 of the former Act before 1 July, 1871.

[3] See the Civ. Proc. Code, sec. 623, and 4 Bom. 26.

[4] i.e. (according to the Madras High Court) the fee which would be leviable on a plaint or memorandum of appeal seeking the additional relief sought by the petition of review, 7 Mad. H. C., Appx. 1.

[5] Civ. Proc. Code, sec. 623. This does not include a petition for a new trial in a Small Cause Court, 14 Suth. Civ. R. 249: 7 Bom. H. C., A.C. 109.

[6] In computing this period, the time during which the Court is closed for vacation cannot be excluded, 9 Mad. 134.

SCHEDULE I.

Ad valorem fees.

Number.		*Proper Fee.*
7. Copy of a decree or order having the force of a decree[1].	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a*) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Eight annas.
	(*b*) If such amount or value exceed fifty rupees	One rupee.
	When such decree or order is made by a High Court	Four rupees.
8. Copy of any document liable to stamp-duty under the General Stamp Act, 1869[2], when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*) When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(*b*) In any other case ...	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas.
10. Certificate of administration granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or under Act No. XX of 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*)[3].	If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees	Five rupees.
	If such amount or value exceeds five hundred rupees but not one thousand rupees	Ten rupees.
	And for every one thousand rupees, or part thereof, in excess of one thousand rupees.	Five rupees.

[1] 6 Mad. H. C. Appx. xii, xxiv. [2] Now see Act I of 1879, sec. 21, infra.
[3] See sec 6 supra and 12 Cal 542.

SCHEDULE I.

Ad valorem fees.

Number.		*Proper Fee.*
11. Probate of a will or letters of administration with or without will annexed. 12. Certificate granted under Act No. XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), or under Bombay Regulation VIII of 1827 (*to provide for the formal recognition of Heirs, Executors and Administrators, and for the appointment of Administrators and Managers of Property by the Courts*).	If the amount or value[1] of the property[2] in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees[3]. NOTE.—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all moneys recovered or realised by him under such certificate. If the moneys so recovered or realised exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.	Two per centum on such amount or value[1]: Provided that when, after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant[4].
13. Application to the Chief Court or the Court of the Financial Commissioner of the Panjáb for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure[5].	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

[1] i.e. the market-value, 1 Bom. 118, which, where the property is mortgaged, has been held to be the equity of redemption, 6 N. W. P. 214. But see 8 Ben. Appx. 43, where Norman J. held that the value of mortgaged property was (for the purpose of this Act) 'the value of the entire property, less the amount of the encumbrance.' So where an annuity is charged on the property, the fee should be levied on the value of the property less the capitalised value of the annuity, 3 Cal. 736.

[2] to which the deceased was entitled to, not property of which he was a trustee, 6 Ben. Appx. 138: 11 Ben. Appx. 39: 14 Ben. 184 (but see 7 Ben. 57): or over which he exercises a general and absolute power of appointment by will, 12 Ben. Appx. 21. No allowance is made for debts due by the deceased, 9 Ben. 30, or the recovery of which is doubtful, 13 Ben. Appx. 24.

[3] 5 Mad. H. C. Appx. xlv.

[4] This proviso was added by Act V of 1881, sec. 153.

[5] Added by Act XVIII of 1884, sec. 71

Table of rates of ad valorem fees leviable on the institution of suits.

SCHEDULE I.

When the amount or value of the subject-matter exceeds	*But does not exceed*	*Proper Fee*			*When the amount or value of the subject-matter exceeds*	*But does not exceed*	*Proper Fee*		
Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P.
.....	5	0	6	0	410	420	31	8	0
5	10	0	12	0	420	430	32	4	0
10	15	1	2	0	430	440	33	0	0
15	20	1	8	0	440	450	33	12	0
20	25	1	14	0	450	460	34	8	0
25	30	2	4	0	460	470	35	4	0
30	35	2	10	0	470	480	36	0	0
35	40	3	0	0	480	490	36	12	0
40	45	3	6	0	490	500	37	8	0
45	50	3	12	0	500	510	38	4	0
50	55	4	2	0	510	520	39	0	0
55	60	4	8	0	520	530	39	12	0
60	65	4	14	0	530	540	40	8	0
65	70	5	4	0	540	550	41	4	0
70	75	5	10	0	550	560	42	0	0
75	80	6	0	0	560	570	42	12	0
80	85	6	6	0	570	580	43	8	0
85	90	6	12	0	580	590	44	4	0
90	95	7	2	0	590	600	45	0	0
95	100	7	8	0	600	610	45	12	0
100	110	8	4	0	610	620	46	8	0
110	120	9	0	0	620	630	47	4	0
120	130	9	12	0	630	640	48	0	0
130	140	10	8	0	640	650	48	12	0
140	150	11	4	0	650	660	49	8	0
150	160	12	0	0	660	670	50	4	0
160	170	12	12	0	670	680	51	0	0
170	180	13	8	0	680	690	51	12	0
180	190	14	4	0	690	700	52	8	0
190	200	15	0	0	700	710	53	4	0
200	210	15	12	0	710	720	54	0	0
210	220	16	8	0	720	730	54	12	0
220	230	17	4	0	730	740	55	8	0
230	240	18	0	0	740	750	56	4	0
240	250	18	12	0	750	760	57	0	0
250	260	19	8	0	760	770	57	12	0
260	270	20	4	0	770	780	58	8	0
270	280	21	0	0	780	790	59	4	0
280	290	21	12	0	790	800	60	0	0
290	300	22	8	0	800	810	60	12	0
300	310	23	4	0	810	820	61	8	0
310	320	24	0	0	820	830	62	4	0
320	330	24	12	0	830	840	63	0	0
330	340	25	8	0	840	850	63	12	0
340	350	26	4	0	850	860	64	8	0
350	360	27	0	0	860	870	65	4	0
360	370	27	12	0	870	880	66	0	0
370	380	28	8	0	880	890	66	12	0
380	390	29	4	0	890	900	67	8	0
390	400	30	0	0	900	910	68	4	0
400	410	30	12	0	910	920	69	0	0

SCHEDULE I.

Table of rates of ad valorem fees, &c.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee		
Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P.
920	930	69	12	0	6,250	6,500	335	0	0
930	940	70	8	0	6,500	6,750	345	0	0
940	950	71	4	0	6,750	7,000	355	0	0
950	960	72	0	0	7,000	7,250	365	0	0
960	970	72	12	0	7,250	7,500	375	0	0
970	980	73	8	0	7,500	7,750	385	0	0
980	990	74	4	0	7,750	8,000	395	0	0
990	1,000	75	0	0	8,000	8,250	405	0	0
1,000	1,100	80	0	0	8,250	8,500	415	0	0
1,100	1,200	85	0	0	8,500	8,750	425	0	0
1,200	1,300	90	0	0	8,750	9,000	435	0	0
1,300	1,400	95	0	0	9,000	9,250	445	0	0
1,400	1,500	100	0	0	9,250	9,500	455	0	0
1,500	1,600	105	0	0	9,500	9,750	465	0	0
1,600	1,700	110	0	0	9,750	10,000	475	0	0
1,700	1,800	115	0	0	10,000	10,500	490	0	0
1,800	1,900	120	0	0	10,500	11,000	505	0	0
1,900	2,000	125	0	0	11,000	11,500	520	0	0
2,000	2,100	130	0	0	11,500	12,000	535	0	0
2,100	2,200	135	0	0	12,000	12,500	550	0	0
2,200	2,300	140	0	0	12,500	13,000	565	0	0
2,300	2,400	145	0	0	13,000	13,500	580	0	0
2,400	2,500	150	0	0	13,500	14,000	595	0	0
2,500	2,600	155	0	0	14,000	14,500	610	0	0
2,600	2,700	160	0	0	14,500	15,000	625	0	0
2,700	2,800	165	0	0	15,000	15,500	640	0	0
2,800	2,900	170	0	0	15,500	16,000	655	0	0
2,900	3,000	175	0	0	16,000	16,500	670	0	0
3,000	3,100	180	0	0	16,500	17,000	685	0	0
3,100	3,200	185	0	0	17,000	17 500	700	0	0
3,200	3,300	190	0	0	17,500	18,000	715	0	0
3,300	3,400	195	0	0	18,000	18,500	730	0	0
3,400	3,500	200	0	0	18,500	19,000	745	0	0
3,500	3,600	205	0	0	19,000	19,500	760	0	0
3,600	3,700	210	0	0	19,500	20,000	775	0	0
3,700	3,800	215	0	0	20,000	21,000	795	0	0
3,800	3,900	220	0	0	21,000	22,000	815	0	0
3,900	4,000	225	0	0	22,000	23,000	835	0	0
4,000	4,100	230	0	0	23,000	24,000	855	0	0
4,100	4,200	235	0	0	24,000	25,000	875	0	0
4,200	4,300	240	0	0	25,000	26,000	895	0	0
4,300	4,400	245	0	0	26,000	27,000	915	0	0
4,400	4,500	250	0	0	27,000	28,000	935	0	0
4,500	4,600	255	0	0	28,000	29,000	955	0	0
4,600	4,700	260	0	0	29,000	30,000	975	0	0
4,700	4,800	265	0	0	30,000	32,000	995	0	0
4,800	4,900	270	0	0	32,000	34,000	1,015	0	0
4,900	5,000	275	0	0	34,000	36,000	1,035	0	0
5,000	5,250	285	0	0	36,000	38,000	1,055	0	0
5,250	5,500	295	0	0	38,000	40,000	1,075	0	0
5,500	5,750	305	0	0	40,000	42,000	1,095	0	0
5,750	6,000	315	0	0	42,000	44,000	1,115	0	0
6,000	6,250	325	0	0	44,000	46,000	1,135	0	0

SCHEDULE I.
Table of rates of ad valorem fees, &c.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.	Rs.	Rs.	Rs.	A.	P.
46,000	48,000	1,155	0	0	230,000	235,000	2,100	0	0
48,000	50,000	1,175	0	0	235,000	240,000	2,125	0	0
50,000	55,000	1,200	0	0	240,000	245,000	2,150	0	0
55,000	60,000	1,225	0	0	245,000	250,000	2,175	0	0
60,000	65,000	1,250	0	0	250,000	255,000	2,200	0	0
65,000	70,000	1,275	0	0	255,000	260,000	2,225	0	0
70,000	75,000	1,300	0	0	260,000	265,000	2,250	0	0
75,000	80,000	1,325	0	0	265,000	270,000	2,275	0	0
80,000	85,000	1,350	0	0	270,000	275,000	2,300	0	0
85,000	90,000	1,375	0	0	275,000	280,000	2,325	0	0
90,000	95,000	1,400	0	0	280,000	285,000	2,350	0	0
95,000	100,000	1,425	0	0	285,000	290,000	2,375	0	0
100,000	105,000	1,450	0	0	290,000	295,000	2,400	0	0
105,000	110,000	1,475	0	0	295,000	300,000	2,425	0	0
110,000	115,000	1,500	0	0	300,000	305,000	2,450	0	0
115,000	120,000	1,525	0	0	305,000	310,000	2,475	0	0
120,000	125,000	1,550	0	0	310,000	315,000	2,500	0	0
125,000	130,000	1,575	0	0	315,000	320,000	2,525	0	0
130,000	135,000	1,600	0	0	320,000	325,000	2,550	0	0
135,000	140,000	1,625	0	0	325,000	330,000	2,575	0	0
140,000	145,000	1,650	0	0	330,003	335,000	2,600	0	0
145,000	150,000	1,675	0	0	335,000	340,000	2,625	0	0
150,000	155,000	1,700	0	0	340,000	345,000	2,650	0	0
155,000	160,000	1,725	0	0	345,000	350,000	2,675	0	0
160,000	165,000	1,750	0	0	350,000	355,000	2,700	0	0
165,000	170,000	1,775	0	0	355,000	360,000	2,725	0	0
170,000	175,000	1,800	0	0	360,000	365,000	2,750	0	0
175,000	180,000	1,825	0	0	365,000	370,000	2,775	0	0
180,000	185,000	1,850	0	0	370,000	375,000	2,800	0	0
185,000	190,000	1,875	0	0	375,000	380,000	2,825	0	0
190,000	195,000	1,900	0	0	380,000	385,000	2,850	0	0
195,000	200,020	1,925	0	0	385,000	390,090	2,875	0	0
200,000	205,000	1,950	0	0	390,000	395,000	2,900	0	0
205,000	210,000	1,975	0	0	395,000	400,000	2,925	0	0
210,000	215,000	2,000	0	0	400,000	405,000	2,950	0	0
215,000	220,000	2,025	0	0	405,000	410,000	2,975	0	0
220,000	225,000	2,050	0	0	410,000	.....	3,000	0	0
225,000	230,000	2,075	0	0					

SCHEDULE II.

Fixed Fees.

Number.		*Proper Fee.*
1. Application[1] or petition.	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction[2], or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859[3], or to any Court of Small Causes constituted under Act No. XI of 1865[4], or under Act No. XVI of 1868[5], section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	One anna.

[1] i.e. application in writing, 2 N. W. P. 418. This includes an application for probate or administration, 15 Suth. Civ. R. 40; but not an application by a witness for the return of a document filed by him in obedience to a summons, ibid. 237.

[2] 7 Bom. H.C., A.C. 109 (petition for new trial in S. C. Court).

[3] Repealed by Act VIII of 1887.

[4] Read now Act IX of 1887.

[5] Read now Act XII of 1887.

SCHEDULE II. Fixed fees.	*Number.*		*Proper Fee*
	1. Application or petition—(*continued*)	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office [1].	One anna.
		(*b*) When containing a complaint or charge of any offence [2] other than an offence for which Police officers may, under the Code of Criminal Procedure, 1882, arrest without warrant, and presented to any Criminal Court;	Eight annas.
		or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act [3];	
		or to deposit in court revenue or rent;	
		or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
		(*c*) When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act	One rupee
		(*d*) When presented to a High Court	Two rupees.
	2 Application [4] for leave to sue as a pauper	... ...	Eight annas.

[1] 6 Ben. Appx. 137 (fees for translations).

[2] 8 Bom H C Cr 22

[3] 8 Mad. 15 (application to withdraw suit).

[4] in writing.

SCHEDULE II.

Fixed fees.

Number.		*Proper Fee.*
3. Application[1] for leave to appeal as a pauper	(*a*) When presented to a District Court	One rupee.
	(*b*) When presented to a Commissioner or a High Court	Two rupees.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or Bombay Act No. V of 1864[2] (*to give Mámlatdárs' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law*)		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy	... ...	Eight annas.
6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority		
7. Undertaking under section 49 of the Indian Divorce Act...		
8. Petition of objection to assessment under the Indian Income Tax Act[3]		
9. *Repealed by Act XVI of* 1874.		
10. Mukhtárnáma or Wakálatnáma.	When presented for the conduct of any one case—	
	(*a*) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this Number[4]	Eight annas.

[1] in writing.

[2] Repealed by Bom. Act III of 1876.

[3] Repealed by Act XVI of 1874.

[4] 9 Mad. 146 (power to vakíl to obtain copies of records from Collector's office).

SCHEDULE II. Fixed fees.	*Number.*		*Proper Fee.*
	10. Mukhtárnáma or Wakálatnáma — (*continued.*)	(*b*) to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority ...	One rupee.
		(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority ...	Two rupees.
	11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or chief controlling revenue or executive authority ...	Eight annas.
		(*b*) to a High Court[1] or Chief Commissioner, or other chief controlling executive or revenue authority ...	Two rupees.
	12. Caveat		
	13. Application under Act No. X of 1859, section 26, or Bengal Act No. VI of 1862, section 9, or Bengal Act No. VIII of 1869, section 37[2].		
	14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866	.. ..	Five rupees
	15. Plaint or memorandum of appeal in a suit to obtain possession of a wife.		
	16. Administration-bond.	... ...	Eight rupees
	17. Plaint or memorandum of appeal in each of the following suits:—	... ...	Ten rupees.
	i. to alter or set aside a summary de-		

[1] 8 Bom. H. C., A. C. 17 (application to High Court to set aside an order of a District Court as to filing an award): 8 Cal 720.

[2] The Acts mentioned in this number have been repealed. See Acts VIII of 1885, XVIII of 1873, IX of 1883, and Ben. Act I of 1879.

Number.		Proper Fee.
ision or order of any f the Civil Courts not established by Letters Patent or of any Revenue Court[2]; ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates: iii. to obtain a declaratory decree where no consequential relief is prayed[3]: iv. to set aside an award: v. to set aside an adoption: vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act[4] ... ... 18. Application[5] under section 326[6] of the Code of Civil Procedure ... ... 19. Agreement under section 328[7] of the same Code	... ...	Ten rupees.
20. Every petition under the Indian Divorce Act except petitions under section 44 of the same Act.	... ...	Twenty rupees.

[1] i.e. a decision or order not made in a regular suit or appeal, 4 Bom. 515, e.g. a decision as to the removal or retention of an attachment. See 4 Bom. 535: 9 Bom. 20: 10 Bom. 610 6 All. 341, 466.

[2] 4 Mad. 204. (Suit to control the award of a settlement officer.)

[3] For illustrations of this clause, see 2 Bom. 219: 5 All. 331: 15 Suth. Civ. R. 412: 8 Ben. Appx. 32: 16 Suth. Civ. R. 156, 259: 15 Ben. 167: 13 Cal. 162: 7 Mad. 134: 10 Mad. 187.

[4] See infra, the Suits Valuation Act, 1887, sec. 4. Appeals to the High Court arising out of suits brought under the Registration Act, sec. 77, come under art. 17, 8 Cal. 515; and see 8 Mad. 22 as to claims under the local Forest Act. For a case in which it was held that cl. vi did not apply, see 10 Cal. 380.

[5] in writing.

[6] secs. 523 and 524 of the present Code.

[7] secs. 527 and 528 of the present Code.

SCHEDULE II. Fixed fees.

Number.		*Proper Fee.*
and every memorandum of appeal under section 55 of the same Act.		
21. Plaint or memorandum of appeal under the Pársí Marriage and Divorce Act, 1865.	... ...	Twenty rupees.

SCHEDULE III.

ENACTMENTS REPEALED.

[*Repealed by Act XIV of* 1870.]

BENGAL SECRETARIAT LIBRARY.

ACT No. VII OF 1887.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th February, 1887.)

AN ACT TO PRESCRIBE THE MODE OF VALUING CERTAIN SUITS FOR THE PURPOSE OF DETERMINING THE JURISDICTION OF COURTS WITH RESPECT THERETO.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; It is hereby enacted as follows:—

Title.

1. This Act may be called the Suits Valuation Act, 1887.

PART I.

SUITS RELATING TO LAND.

Extent and commencement of Part I.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the Governor General in Council, by notification[1] in the Gazette of India, directs.

Power to make rules determining value of land for jurisdictional purposes.

3. (1) The Local Government may, with the previous sanction of the Governor General in Council[2], make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (*d*)[3].

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

4. Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

[1] No such notification appears to have issued.

[2] and after consulting the High Court, sec. 5.

[3] i. e suits for possession of land, to enforce a right of preemption and for specific performance of an award relating to land

Making and enforcement of rules.

5. (1) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

Repeal of Act III of 1873, s. 14.

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories.

PART II.

OTHER SUITS.

Extent and commencement of Part II.

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court-fee value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (*d*), court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same [1].

Determination of value of certain suits by High Court.

9. When the subject-matter of suits of any class, other than suits mentioned in the Courts-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf [2].

Repeal.

10. Section 32 of the Panjáb Courts Act, 1884, is hereby repealed.

[1] Under the previous law, in a suit for foreclosure or sale the principal and interest due under the mortgage-deed represented the value of the suit for the purposes of jurisdiction, while the value for the computation of court-fees was the principal only.

[2] The Panjáb Chief Court has issued directions under this section. See *Panjáb Record*, vol. xxii. part II. p. 19.

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

11. (1) Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court[1].

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

[1] This gives the appellate Court a discretion as to proceeding with an appeal in a suit which was instituted in a Court without jurisdiction as regards the value.

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

Proceedings pending at commencement of Part I or Part II.

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit.

BENGAL SECRETARIAT LIBRARY.

THE STAMP ACT, 1879.

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BENGAL SECRETARIAT LIBRARY.

ACT No. I of 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 17th January*, 1879).

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO STAMPS.

(AS AMENDED BY ACTS IX OF 1884 AND I OF 1888.)

CHAPTER I.

PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called 'The Indian Stamp Act, 1879:'

It extends to the whole of British India[1];

And it shall come into force on the first day of April, 1879.

Repeal of enactments.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause. 'Banker.' 'Bill of exchange.' 'Bill of lading.'

3. In this Act, unless there is something repugnant in the subject or context,—

(1) 'Banker' includes a bank and any person acting as a banker:

(2) 'Bill of exchange[2]' includes a hundí:

(3) 'Bill of lading' means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein

[1] It has been declared in force in Upper Burma generally, Act XX of 1886. Outside British India, it is in force, with a few necessary modifications, in the Haidarábád Assigned Districts: the civil and military station of Bangalore: the parganas in the Rájputána Agency under British administration: the cantonments of Sikandarábád and Dísah, probably also those at Baroda and Ábu and in the Central India Agency. the Rajputána-Málwa State Railway. The greater part of the Act is in force in Mysore.

On the other hand, the Act was in 1884 excluded from certain districts of Assam.

[2] See Act XXVI of 1881, sec. 5.

described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated :

(4) 'Bond' means— 'Bond.'

(*a*) any instrument whereby a person[1] obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be[2]:

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another[3]; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another[4]:

(5) 'Chargeable' means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed : 'Chargeable.'

(6) 'Cheque' means a bill of exchange drawn on a banker and payable on demand : 'Cheque.'

(7) 'Chief Controlling Revenue-Authority' means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue : in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner : in Sind, the Commissioner : in the Panjáb, the Financial Commissioner ; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office : 'Chief Controlling Revenue-Authority.'

(8) 'Collector' means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office[5] : 'Collector.'

(9) 'Conveyance' means any instrument by which property (whether moveable or immoveable) is transferred on sale[6] : 'Conveyance.'

[1] This includes 'persons,' e.g. a principal and his surety, 5 Bom. 191.

[2] See 8 Cal. 284.

[3] See 8 Bom. 297 : 10 Mad. 158.

[4] 7 Bom. 137, and see 9 All. 585.

[5] See *Fort St George Gazette*, 15 July 1879, p. 488 : 2nd Sept. 1879, p. 587 : 30 Nov. 1881, p. 699.

[6] 7 Mad. 350 : 7 Cal. 21. For a definition of 'sale,' see the Transfer of Property Act, sec. 54.

'Duly stamped.'

(10) 'Duly stamped,' as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed[1]:

'Instrument of partition.'

(11) 'Instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty[2], and includes also a final order for effecting a partition passed by any Revenue-Authority[3]:

'Lease.'

(12) 'Lease' means a lease of immoveable property[4] and includes also

(*a*) a pattá,

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart[5] of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

'Mortgage-deed.'

(13) 'Mortgage-deed' includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property[6]:

'Paper.'

(14) 'Paper' includes vellum, parchment or any other material on which an instrument may be written:

'Policy of insurance.'

(15) 'Policy of insurance' means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event:

It includes a life-policy, [and includes also any writing evidencing the renewal of, for the purpose of keeping in force, a policy of fire-insurance in respect of which, and of the previous renewal whereof

[1] 7 Mad. 176: 8 Mad. 532. The actual time of the execution, not the date on which the instrument purports to have been executed, is to be regarded, see *Clarke* v. *Roche*, 3 Q.B.D. 170.

[2] 9 Bom. 50: but see 7 Mad. 385.

[3] i. e. the order passed after the partition has been made and declaring the various allotments, 2 All. 664, 667.

[4] See the definition in the Transfer of Property Act, sec. 105.

[5] See as to counterparts, sched. I, art. 23: sched. II, 13 (*c*).

[6] 9 All. 585: 11 Mad. 39. The property may apparently be *in futuro*, as when a crop of indigo not then in existence is assigned by way of security for a loan. See 8 Bom. H. C. 180 and 2 Cal. 58, decisions under the Stamp Act of 1869, which defined 'property' as '*being* in British India.'

(if any), there has not already been paid the stamp-duty which would have been chargeable if the policy had originally been granted for a longer term than six months[1]]:

(16) 'Power-of-attorney' means any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force[2]) empowering a specified person to act in the stead of the person executing it[3]: 'Power of-attorney.'

(17) 'Receipt' means any note, memorandum, writing[4] or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowleged to have been received. or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt[5], or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person[6]: 'Receipt.'

(18) 'Schedule' means a schedule to this Act annexed: 'Schedule.'

(19) 'Settlement' means any non-testamentary disposition in writing, of moveable or immoveable property, made— 'Settlement.'

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition[7]:

(20) 'Vessel' means anything made for the conveyance by water of human beings or property: 'Vessel.'

(21) 'Written' and 'writing' include every mode in which words or figures can be expressed upon paper[8]. 'Written,' 'writing.'

4. The schedules and everything therein contained shall be read and construed as part of this Act. Schedules to be read as part of Act.

[1] Added by Act I of 1888.

[2] 3 Cal. 767: 9 Mad. 146.

[3] 3 Bom. 49.

[4] This includes a letter, 8 Mad. 11.

[5] See 4 Cal. 829 (bank memo.): 11 Cal. 267 (entry by creditor in debtor's *khátta*-book): 6 All. 253.

[6] See the exemptions, infra, sched. II, 15.

[7] 7 Mad. 349.

[8] This includes parchment and palm-leaves (*cadjans*): see the definition of 'paper,' supra, cl. (14).

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

Instruments chargeable with duty.

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say—

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, 1879;

(*b*) every bill of exchange, cheque or promissory note[1] drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done[2], in British India, and is received in British India[2].

Several instruments used in single transactions.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule[3].

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

Instruments relating to

7. Any instrument comprising or relating to several distinct matters[4] shall be chargeable with the aggregate amount of the

[1] See Act XXVI of 1881, sec. 4, and 8 Cal. 647. In 8 Mad. 87 the note was attested. 'Promissory note' does not include a conditional promise to pay. Otherwise under the English Stamp Act, 33 & 34 Vic. c. 97, sec. 49.

[2] 1 Mad. 134.

[3] Cf. 33 & 34 Vic. c. 97, secs. 76, 77.

[4] i.e. transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one, 8 Cal. 254, 259; see 4 Bom. 19: 10 Bom. 47; cf. 33 & 34 Vic. c. 97, sec 8, cl. (1).

duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

several distinct matters.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties[1]; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Instruments coming within several descriptions in schedule I.

8. The Governor General in Council may, by order published in the *Gazette of India*,

Power to reduce or remit duty.

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable[2], and

(*b*) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

Duties how to be paid.

(*a*) according to the provisions herein contained, or

(*b*) when no such provision is applicable thereto—as the Governor General in Council may by rule direct[3].

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundís—the size of the paper on which they are written.

[1] 9 All. 585.

[2] This power has been frequently exercised. See a list of examples in Donogh's *Stamp Law of British India*, Calcutta 1886, pp. 97–101, and Macpherson's *Lists*, pp. 69–74.

[3] See Notification No. 1288, 3rd March, 1882; *Gazette of India*, 11 March, 1882, Part I, p. 131. See also *Gazette of India*, Part I, 4 Nov. 1882, p. 450: 17 March 1883, p. 159.

Use of adhesive stamps.

10. The following instruments may be stamped with adhesive stamps, namely:—

(*a*) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India[1];

(*c*) entry as an advocate, vakíl or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares of public Companies and Associations.

Cancellation of adhesive stamps.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again[2],

and whoever executes any instrument on any paper bearing an adhesive stamp[3] shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

How instruments stamped with impressed stamps are to be written.

12. Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner, that the stamp may appear on the face of the instrument[4] and cannot be used for or applied to any other instrument[5].

Only one instrument to be on same stamp.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty had already been written: provided that nothing in this section shall prevent any endorsment which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced

[1] The words 'drawn .... India' apply to the entire clause, 2 Mad. 173.

[2] This paragraph applies to cases in which the instrument chargeable with duty may be stamped after execution, 9 All. 210.

[3] This meets the case of a cheque contained in the cheque-books issued by some of the Indian banks to their customers.

[4] From 33 & 34 Vic. c. 97, sec. 7. As to the objects of sec. 12 of the Indian Act, see 5 Bom. 194.

[5] This does not require that the document should commence on the side on which the stamp is impressed, or that both sides of the paper or parchment may not be written upon, 5 Bom. 188.

thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

14. Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped[1]. Instrument written contrary to s. 12 or 13.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument[2] in such manner as the Governor General in Council may by rule prescribe[3]. Denoting duty.

C.—Of the Time of stamping Instruments.

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution. Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe[4], with a stamp of such value as the person so taking such instrument may require and pay for. Instruments other than bills etc. executed out of British India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same: Bills etc. drawn out of British India.

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 11, and such holder has no reason to believe

[1] 11 Mad. 40. Any hardship which might otherwise arise from this provision is prevented by the provisions of Chap. IV and of sec. 52.

[2] From the English Stamp Act, 1870, sec. 14.

[3] The denoting must be by endorsement under the hand of the Collector, Notification No. 1288, 3d March, 1882, § 15.

[4] See Notification No. 1288, 3d March, 1882.

that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled[1]. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

Conversion of amount expressed in certain currencies.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

One pound sterling or pound currency is equivalent to ten rupees:

One hundred francs are equivalent to forty rupees:

One Mexican or China dollar is equivalent to two rupees four annas.

Amount expressed in other foreign currencies.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Stock and marketable securities.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument[2].

Effect of statement of rate of exchange or average price.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary be proved, to be duly stamped[3].

Instruments reserving interest.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein[4].

[1] This protects a person who in good faith takes a foreign bill bearing a proper stamp, which afterwards turns out not to have been affixed in accordance with the law.

[2] From 33 & 34 Vic. c. 97, sec. 12.

[3] From the same, sec. 13.

[4] 4 Bom. 326: 5 Bom. 470, 474.

24. Where any property is transferred[1] to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer[2] of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty[3]. **Transfer in consideration of debt, or subject to future payment, etc.**

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically[4], or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be— **Valuation in case of annuity, etc.**

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance[5].

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient[6]. **Stamp where value of subject-matter is indeterminate.**

[1] otherwise than by operation of law.

[2] 5 Mad. 18, followed in 10 Cal. 92: and see 7 Mad. 421 as to the stamp on a certificate of sale of a right to redeem. The words 'subject . . . to the payment or transfer' etc. apply only to cases in which the purchaser undertakes a liability. But see 5 Bom. 470.

[3] From 33 & 34 Vic. c. 97, sec. 73.

[4] See *Limmer Asphalte Paving Co.* v. *Commrs. of Inland Revenue*, L. R., 7 Ex. 211.

[5] Cf. 33 & 34 Vic. c. 97, s. 72.

[6] 3 Mad. 342.

Facts affecting duty to be set forth in instrument.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein[1].

Direction as to duty in case of certain conveyances.

28. (*a*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(*b*) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*c*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part, thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

[1] Sec. 63 infra provides a sanction for this rule, which is taken from 33 & 34 Vic c. 97, s. 10.

(*e*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne— **Duties by whom payable.**

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and 60 (*a*) and (*b*) of the first schedule—by the person drawing, making or executing such instrument:

(*b*) in the case of a policy of insurance[1]—by the insured:

(*c*) in the case of a conveyance[2]—by the grantee: in the case of a lease[3] or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition[4]—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue-Authority, in such proportion as such Authority directs[5]:

(*f*) in the case of an instrument of exchange—by the parties in equal shares; and

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays[6] a fee of **Adjudication as to proper stamp.**

[1] Sec. 3, cl. (15).
[2] Sec. 3, cl. (9).
[3] Sec. 3, cl. (12).
[4] Sec. 3, cl. (11).
[5] 2 All. 666.
[6] in cash, see below, sec. 32, note.

such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

Collector may call for abstract and evidence.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proviso.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid[1].

Certificate by Collector.

31. When an instrument brought to the Collector under section 30 is in his opinion one of a description chargeable with duty, and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section 30, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence[2] or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorise the Collector to endorse—

[1] 33 & 34 Vic. c. 97, s. 20.

[2] 3 All. 115.

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under s. 30 how made.

32. Every payment of a fee under section 30 shall be made in stamps, or cash, as the Governor General in Council may by rule direct [1].

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having by law or consent of parties authority to receive evidence [2], and

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed [3].

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter XL or chapter XLI of the Code of Criminal Procedure, or chapter XVIII of the Presidency Magistrates Act [4]:

[1] The Governor General in Council has ruled that the payment shall be made in cash, Notification No. 1288, 31st March, 1882.

[2] This includes not only judicial officers but arbitrators and special commissioners.

[3] See above for a list of the laws here referred to. As to construing them 'in favour of the subject,' see 8 Cal. 596–7: 10 Cal. 280: 9 Mad. 146, see 148.

As to stamped paper signed in blank, see 5 Cal. 39.

[4] These references are now to be read as if they were made to Act X of 1882, chapters XII and XXXVI.

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, etc.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose[1] by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped[2]:

Provided that—

Instruments admissible on payment of duty and penalty,

(1) any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note[3], shall, subject to all just exceptions[4], be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion[5];

and in certain criminal proceedings.

(2) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than a proceeding under chapter XL or chapter XLI of the Code of Criminal Procedure, or chapter XVIII of the Presidency Magistrates Act[6];

Admission of instrument not to be questioned.

(3) when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in

[1] not even for a collateral purpose: see 4 Bom. 349 on the Stamp Act of 1869.

[2] See above, sec. 3, cl. 10, and 5 Ben. 103: 7 Mad. 178: 3 Bom. H. C. A. C. J. 100.

[3] 8 Mad. 87. That promissory notes and hundis not 'duly stamped' (i.e. at or before execution) cannot be stamped by the Court and received in evidence, see 13 Ben. Appx. 33: 4 Cal. 259: 8 Cal. 645: 7 Mad. H. C. 361: 3 Mad. 251: 7 Bom. H. C., O. C. J. 180.

[4] 10 Bom. H. C. 408.

[5] Where the duty and penalty have not been tendered to and refunded by a Court of first instance, an appellate Court has no power to direct reception of the document on a subsequent tender of that amount, 4 Cal. 213: but see 5 Mad. 220. Where penalty or stamp-duty is improperly levied, see secs. 36, 42. An appeal does not lie against a decision erroneously directing the enforcement of such penalty, the error not affecting the merits or the jurisdiction, 5 Cal. 311

[6] i.e. Act X of 1882, chapters XII and XXXVI.

question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped[1].

35. When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf. Instruments impounded how dealt with.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section 35, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or Power to refund penalty paid under s. 35, para. 1.

when such instrument has been impounded only because it has been written in contravention of section 12, or section 13, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall[2] adopt the following procedure:— Power to stamp instruments impounded.

(*a*) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duty stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(*b*) If the Collector is of opinion that such instrument is chargeable with duty[3] and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees[4]; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit.

[1] 3 Cal. 787, following 16 Suth. Civ. R. 6: 5 Mad. 220: 12 Cal. 64.

[2] 8 Cal. 261.

[3] under the Stamp Act in force when the instrument was executed, 5 Mad. 394.

[4] 8 Cal. 261: 5 Mad. 394: 10 Bom. 239.

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Instruments unduly stamped by accident, etc.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 37, receive such amount and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Endorsement of instruments on which duty has been paid under s. 34, 37 or 38.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 37 or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate:

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3 [1].

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument: Prosecution for offence against stamp-law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears [2] to the Collector that the offence was committed with an intention [3] of evading payment of the proper duty [4]. Proviso.

41. When any duty or penalty has been paid, under section 34, section 37 or section 38, by any person in respect of an instrument, and by agreement, or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid [5]; and for the purpose of such recovery any certificate granted in respect of such instrument under section 39 shall be conclusive evidence of the matters therein certified [6]. Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section 34 or 37, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part. Remission of penalty paid under s. 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section 35 be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage. Non-liability for loss of instruments sent under s. 35.

When any instrument is about to be sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of Copy of instruments so sent.

[1] Supra, p. 524.

[2] This does not require the Collector to hold a formal enquiry or record proceedings, 7 Mad. 538.

[3] 3 Ben. A. C. J. 329: 5 Bom. 629. The law does not require intention to be proved as part of the offence, 7 Mad. 537.

[4] 2 Cal. 399: 8 Cal. 259. The effect of secs. 37 and 40 is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under sec. 69, 7 Bom. 82. As to instruments chargeable with a one-anna stamp duty, bills of exchange and promissory notes, see sec. 61.

[5] 6 All. 70.

[6] The object of this section is to stimulate the production of instruments liable to stamp-duty and not properly stamped. It enables the producer to throw the cost of producing the unstamped document upon another person.

such first-mentioned person and authenticated by the person impounding such instrument.

Power of presentee[1] to stamp bills etc. received by him unstamped.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented[2] may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid; and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

Procedure where Collector feels doubt as to duty chargeable.

45. If any Collector acting under section 30, section 37 or section 38 feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision[3].

Reference by Revenue-Authority to High Court.

46. The Chief Controlling Revenue-Authority may state any case referred to it under section 45 or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it

[1] The official copy of Act I of 1879 has 'payee'—an obvious misprint or clerical error.

[2] i.e. the drawee, acceptor or promissor.

[3] 7 Mad. 158.

arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

Power of Court to call for further particulars.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Procedure in disposing of reference.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded: and it shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

49. If any Court other than a Court mentioned in section 46 feels doubt[1] as to the amount of duty to be paid in respect of any instrument under the first proviso to section 34, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section 46 refer the same, and such Court shall deal with the case as if it had been referred under section 46, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first-mentioned Court

[1] 11 Mad. 38.

may, of its own motion or on the application of the Collector, take such order into consideration[1]; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced[2].

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such Court was payable in respect of the instrument under section 34 is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

Allowance for spoiled stamps.

51. Subject to such rules as may be made by the Governor General in Council[3] as to the evidence which the Collector[4] may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned[5], namely:—

[1] merely for the purpose of ascertaining whether the Government revenue has suffered, 12 Cal. 66.

[2] 8 Mad. 564.

[3] See Notification No. 1288, 3d March, 1882. As to when such rules are *ultra vires*, see 5 Bom. 197: 7 Mad. 158 and 181: 8 Mad. 532.

[4] That he cannot delegate this authority, see 5 All. 17.

[5] 11 Mad. 37.

(*a*) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon:

(*c*) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee; provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note:

(*d*) The stamp used for any of the following instruments, that is to say—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein for the purpose originally intended:

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed.

(4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his

inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended.

(5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument—

(*a*) such instrument is given up to be cancelled:

(*b*) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid[1].

Allowance for misused stamps.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section 14 owing to such instrument having been written in contravention of the provisions of section 12, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by which it was first or alone executed, and upon the instrument, if

[1] From 33 & 34 Vic. c. 98, sec. 14.

chargeable with duty, being restamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless[1].

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or, (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or, (*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee[2]. Allowance under secs. 51 and 52 how made.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered[3]. Allowance for stamps not required for use.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons[4]. Power to make rules relating to sale of stamps.

56. The Governor General in Council may make rules consistent herewith[5] to carry out generally the purposes of this Act[6]. Power to make rules generally to carry out Act.

[1] 33 & 34 Vic. c. 98, sec. 15.

[2] Ibid. sec. 16.

[3] Ibid. sec. 17.

[4] See sec. 68, infra, for the punishment of disobedience to the rules under this section, which have been made by the Local Governments of Bengal (25 April, 1881, and 18 Dec., 1883), Madras (24 July, 1883), Bombay (13 Sept. 1881), N. W. Provinces and Oudh (22 Sept. 1882), the Panjáb (4 July, 1885, and 2d June, 1881), Assam (23 March, 1882, and 7 Jan., 1884), British Burma (2 Nov., 1880): and the Central Provinces (9 Aug., 1882): also by the Resident, Haidarábád (27 Sept., 1883).

[5] 8 Mad. 532, and see 5 Bom. 197: 7 Mad. 158 and 181.

[6] See Notification No. 1288, 3d March, 1882.

Powers exercisable from time to time.

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Publication of rules.

All rules made under this Act, other than rules made under section 55, shall be published in the *Gazette of India*, and all rules made under section 55 shall be published in the local Gazette[1]. All rules published as required by this section shall, upon such publication, have the force of law.

Obligation to give stamped receipt.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Saving as to court-fees.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

Act to be translated, indexed and sold cheaply.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

CHAPTER VIII.

CRIMINAL OFFENCES[2] AND PROCEDURE.

Executing etc. instrument not duly stamped.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting[3], paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

[1] See *Fort St. George Gazette*, 7 Aug. 1883, Part I, p. 490: *Bombay Government Gazette*, 15 Sept. 1881, Part I, pp. 505–507; 18 Jan. 1883, Part I, p. 60: *Calcutta Gazette*, Part I, 27 April, 1881, pp. 462, 463: 10 Aug. 1881, p. 783; 19 April 1882, p. 362: *Panjáb Gazette*, 11 Feb. 1881, p. 92; *Central Provinces Gazette*, 9 Aug. 1882, Part II, p. 149; *British Burma Gazette*, 22 Nov. 1880, Part II, p. 412.

[2] For other offences relating to stamps, etc., see the Penal Code, secs. 255–263, supra vol. I, pp. 190–192.

[3] i.e. executing as acceptor, 7 Mad. 71.

any person executing[1] or signing otherwise than as a witness any other instrument chargeable with duty[2] without the same being duly stamped, and

any person voting or attemping to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees[3]:

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37 or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Failure to cancel adhesive stamp.

62. Any person required by section 11 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees[4].

Omission to comply with provisions of sec. 27.

63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees[5].

[1] As to drafting or engrossing documents, see 3 Mad. H. C. Rul. xxvii; 1 Bom. H. C. 37. The writing of a document under instructions is not executing it, even though the writer notes the fact with his signature.

[2] This seems to include all instruments (other than bills, cheques and notes) chargeable with stamp-duty of any amount. But the proviso to sec. 41 would appear to restrict clause 2 of sec. 61 to instruments (other than bills etc.) chargeable with duty of one anna only. As to letters acknowledging receipt of more than rs. 20 in payment of a debt, see 8 Mad. 11.

[3] That intention to evade payment is not an essential ingredient in the offences described in the first two clauses of this section, see 6 Mad. H. C. Rulings, v, on the corresponding section of the Stamp Act of 1869. But of course the presence or absence of intention should be considered in fixing the amount of the fine, 2 Cal. 399, 404, and see the proviso to sec. 41. The abetment of any offence under section 61 is punishable under the Penal Code, which now provides for the abetment of offences under special laws. That receiving an unstamped document is not an abetment of its execution, etc., see 7 Bom. 82: 8 All. 18. Compare 33 & 34 Vic. c. 97, sec. 54.

[4] 33 & 34 Vic. c. 97, sec. 24.

[5] Cf. 33 & 34 Vic. c. 97, sec. 10.

Refusal to give receipt. Evading duty on receipts.

64. Any person who, being required under section 58 to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees [1].

Not making out policy.

65. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

Making etc. policy not duly stamped.

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees [2].

Not drawing full number of bills or marine policies purporting to be in sets.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more [3], and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Post-dating bills, etc.

67. Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

Other devices to defraud the revenue.

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force [4],

[1] 33 & 34 Vic. c. 97, sec. 123. This does not affect sec. 61, 8 Mad. 11. And the previous sanction of the Collector under sec. 69 is necessary to a prosecution for an offence against sec. 64, 9 Bom 27.

[2] 33 & 34 Vic. c. 97, sec. 118.

[3] As to drawing bills in sets, see vol. I. of this work, p. 717.

[4] This clause is not controlled by the first clause; it applies to all cases in which a document is executed with intent to defraud the Government of stamp duty, 9 Mad. 138.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps[1] who disobeys[2] any rule made under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both[3]. Breach rule relating to sale of stamps. Unauthorised sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector[4] or such other officer as the Local Government generally, or the Collector specially, authorises in that behalf[5]. Institution and conduct of prosecutions.

The Chief Controlling Revenue-Authority, or any officer authorised by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class[6] shall try any offence under this Act. Jurisdiction of Magistrates.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force. Place of trial.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it: Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

[1] Under this Act, sec. 68 does not apply to the sale of court-fee stamps, 4 All. 216.

[2] whether knowingly or not.

[3] Cf. 33 & 34 Vic. c. 98, sec. 7.

[4] The effect of secs. 37 and 40 is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under sec. 69, 7 Bom. 82.

[5] 9 Bom. 27, where West J. said that the record of the conviction should evidence the sanction. The Collector should not himself try as a Magistrate a person accused of any offence under the Stamp Act, 2 All. 806; 24 Suth. Cr. 1. And a magistrate authorised by the Collector to prosecute stamp-offenders is not competent also to try persons whom he prosecutes, 3 Cal. 622.

[6] supra, p. 73. The Magistrate has to decide (1) whether an offence against the Act has been committed, (2) whether the prosecution has been brought by the proper officer, 24 Suth. Cr. 1.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(*See section* 5.)

Description of Instrument.		*Proper Stamp-duty.*
1. ACKNOWLEDGMENT of a debt[1] exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession	... ...	One anna.
2. ADMINISTRATION-BOND.	... ...	The same duty as a Security-Bond (No. 14).
ADOPTION-DEED ...	See *Instrument, No.* 38.	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorised by law to administer an oath[2]	... ...	One rupee.
See Exemptions, Schedule II (*No.* 1).		
4. AGREEMENT TO LEASE	... ...	The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT[3].	(*a*) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange	One anna.
See Exemptions, Schedule II (*No.* 2).		

[1] 4 Cal. 885: 8 Cal. 282 (account signed by debtor in creditor's books): 9 Cal. 127. For illustrations, see 4 Bom. 326: 2 All. 641: 25 Suth. Civ. R. 361: 15 Cal. 162.

[2] See Act X of 1873, sec. 4, supra p. 937, and Act II of 1874, sec. 60 A (Administrator General): ibid. sec. 47 (auditor of his accounts): VI of 1882, secs. 112, 209 (arbitrators between companies): XXXVII of 1850, sec. 17 (commissioners to enquire into misbehaviour of public servants): VII of 1880, sec. 11 (*d*)(detaining-officers): X of 1865, sec. 250, V of 1881, sec. 69, and VI of 1881, sec. 9 (district delegates): VI of 1882, secs. 84, 86 (inspector of affairs of companies): III of 1877, sec. 63 (registering officers): V of 1873, sec. 7 (secretary to Govt. Savings Bank): 26 & 27 Vic. c. 24. sec. 20(registrar of Vice-admiralty Court); and various local laws.

[3] 15 Cal. 150.

Description of Instrument.		Proper Stamp-duty.
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT. (*continued.*)	(*b*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished ...	Four annas.
	(*c*) If not otherwise provided for by this Act[1]	Eight annas.
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will	... ...	Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit *See Exemptions, Schedule II* (*Nos.* 3 & 4.)	... ...	The same duty as an Award (No. 10).
APPRENTICESHIP-DEED	See *Instrument, No.* 31.	
8. ARTICLES OF ASSOCIATION OF A COMPANY	... ...	Twenty-five rupees.
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court	... ...	Two hundred and fifty rupees.
ASSIGNMENT	See *Conveyance, No.* 21, *and Transfer, No.* 60.	
AUTHORITY TO ADOPT	See *Instrument, No.* 38.	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit. *See Exemption, Schedule II* (*No.* 6.)	(*a*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000.	The same duty as a Bond (No. 13) for such amount.
	(*b*) In any other case...	Five rupees.

[1] 2 All. 659 : 4 Bom. 328 : 5 Bom. 478 : 7 Mad. 209 : 23 Suth. Civ. R. 403.

Stamp-duty on Instruments.

Stamp-duty on Instruments.

Description of Instrument.	Proper Stamp-duty.		
11. Bill of Exchange or Promissory Note[1], not being a cheque, bond, bank-note or currency-note.			
(a) When payable on demand and the amount exceeds Rs. 20	One anna.		
(b) When payable otherwise than on demand, but not more than one year after date or sight.	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
If the amount of the bill or note does not exceed Rs. 200	0 2 0	0 1 0	0 1 0
If it exceeds 200 and does not exceed 400	0 4 0	0 2 0	0 2 0
" 400 " 600	0 6 0	0 3 0	0 2 0
" 600 " 1,000	0 10 0	0 5 0	0 4 0
" 1,000 " 1,200	0 12 0	0 6 0	0 4 0
" 1,200 " 1,600	1 0 0	0 8 0	0 6 0
" 1,600 " 2,500	1 8 0	0 12 0	0 8 0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000	1 8 0	0 12 0	0 8 0
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000	3 0 0	1 8 0	1 0 0
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000	6 0 0	3 0 0	2 0 0
(c) When payable at more than one year after date or sight.	The same duty as a Bond (No. 13) for the amount of such bill or note.		

[1] 8 Mad 87.

Description of Instrument.		*Proper Stamp-duty.*
12. BILL OF LADING ...	... ...	Four annas. If a Bill of Lading is drawn in parts the proper stamp therefor must be borne by each one of the set.
See Exemption, Schedule II (No. 7).		
13. BOND (not otherwise provided for by this Act).	When the amount or value secured does not exceed Rs. 10	Two annas.
See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14).	When such amount or value exceeds Rs. 10, but does not exceed ... 50	Four annas.
	When such amount or value exceeds Rs. 50, but does not exceed ... 100	Eight annas.
See Exemptions, Schedule II (No. 8).	and for every Rs. 100 or part thereof in excess of Rs. 100 up to ... 1,000	Eight annas.
	and for every Rs. 500 or part thereof in excess of ... 1,000	Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof	(*a*) When the amount secured does not exceed ... ... Rs. 1,000	The same duty as a Bond (No. 13).
See Exemptions, Schedule II (Nos. 8 and 12).	(*b*) In any other case ...	Five rupees.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	... ...	The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer[1].	.. ..	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.

[1] 5 Mad. 18: 7 Mad. 421 (sale of right to redeem): 10 Cal. 92 (property sold subject to a mortgage). But see 5 Bom. 470: 10 Bom. 58.

Stamp-duty on Instruments.

Description of Instrument.	*Proper Stamp-duty.*
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association	One anna.
18. CHARTER-PARTY, that is to say, any Instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer	One rupee.
19. CHEQUE for an amount exceeding twenty rupees	One anna.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors [1]	Ten rupees.

[1] See Davidson's *Precedents in Conveyancing*, 3rd ed. vol. v. part II, p. 513, from which this definition was taken.

Description of Instrument.		Proper Stamp-duty.
21. CONVEYANCE[1] not being a TRANSFER mentioned in No. 60 *See Exemptions, Schedule II (Nos. 5 & 17.)*	When the amount of the consideration for such conveyance as set forth therein does not exceed ... Rs. 50	Eight annas.
	When it exceeds Rs. 50 but does not exceed ... 100	One rupee.
	For every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	One rupee
	and for every Rs. 500 or part thereof in excess of .. 1,000	Five rupees.
CO-PARTNERSHIP ...	*See Instrument, No. 32.*	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees ... ... *See Exemptions, Schedule II (Nos. 9 & 10).*	(*a*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ...	Eight annas.
	(*b*) In any other case ...	One rupee.
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid	(*a*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b*) In any other case ...	One rupee.
24. CUSTOMS-BOND ...	... ...	The same duty as a Security Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will	... ...	Fifteen rupees.

[1] This includes the usual covenants for title, 1 Mad. 133. See 7 Mad. 350 (transfer for nominal consideration by executor to legatee): 12 Cal. 383 (share in partnership): 13 Cal. 43 (conveyance by *A* under one denomination to *A* under another denomination). Where the property is subject to a mortgage, see 10 Bom. 58.

Stamp-duty on Instruments.

Stamp-duty on Instruments.

Description of Instrument.		*Proper Stamp-duty.*
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees[1]	... ...	One anna.
DEPOSIT OF TITLE-DEEDS	*See Instrument, No.* 29.	
DISSOLUTION OF PARTNERSHIP ...	*See Instrument, No.* 33.	
DUPLICATE	*See Counterpart, No.* 23.	
27. ENTRY AS AN ADVOCATE, VAKÍL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent or by the Legal Practitioners Act, 1884.	In the case of an Advocate or Vakíl.	Five hundred rupees.
	In the case of an Attorney.	Two hundred and fifty rupees.
See Exemption, Schedule II (*No.* 11.)		
EXCHANGE	*See Instrument, No.* 35.	
EXTRACT	*See Copy, No.* 22.	
FURTHER CHARGE ...	*See Instrument, No.* 30.	
GIFT	*See Instrument, No.* 36.	
28. INDEMNITY-BOND ...	... ...	The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED.	*See Composition-deed, No.* 20.	

[1] 33 & 34 Vic. c. 97, s. 87.

Stamp-duty on Instruments.

Description of Instrument.		*Proper Stamp-duty.*
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property.	(*a*) When such loan is repayable more than three months, but not more than one year, from the date of such instrument.	The same duty as a Bill of Exchange (No. 11 (*b*)) for the amount secured.
	(*b*) When such loan is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange (No. 11 (*b*)) for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(*a*) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.
	(*b*) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule.	The same duty as a Bond (No. 13) for the amount secured by such instrument.
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)[1]...	... ...	Five rupees.
See Exemption, Schedule II (No. 12 (c)).		
32. INSTRUMENT OF CO-PARTNERSHIP ...	... ...	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP	... ...	Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage	... ...	One rupee.

[1] 33 & 34 Vic. c. 97, s. 39.

Stamp-duty on Instruments.

Description of Instrument.		*Proper Stamp-duty.*
35. INSTRUMENT OF EXCHANGE of any property.	... ...	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT[1] (OTHER THAN A SETTLEMENT OR WILL).	... ...	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION.	... ...	The same duty as a Bond (No. 13) for the amount of the value of the property divided[2] as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT	... ...	Ten rupees.
INSURANCE... ...	*See Policy, No.* 49.	
39. LEASE ... ... *See Agreement to lease (No.* 4). *See Exemptions, Schedule II (No.* 13).	(*a*) Where by such lease the rent[3] is fixed and no premium[4] is paid or delivered and such lease purports to be for a term—	
	of less than one year.	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years.	The same duty as a Bond (No. 13) for the average annual rent reserved.

[1] 7 Bom. 194.

[2] i.e. the market-value of the entire property affected by the partition proceedings, 2 All. 666–9. An award directing partition if signed by the persons interested by way of assent, becomes thereby an 'instrument of partition,' and must be stamped accordingly, 9 Bom. 50.

[3] See Transfer of Property Act, sec. 105, supra vol. I. p. 800.

[4] Ibid., 7 Mad. 203.

Description of Instrument.		Proper Stamp-duty.	Stamp-duty on Instruments.
	exceeding three years.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.	
	(*b*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term [1].	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.	
39. LEASE (*continued.*)	(*c*) Where the lease is granted for a fine or premium, and where no rent is reserved [2].	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.	
	(*d*) Where the lease is granted for a fine or premium in addition to rent reserved [2].	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered: Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.	

[1] 7 Mad. 155. [2] 7 Mad. 203.

Stamp-duty on Instruments.

Description of Instrument.		*Proper Stamp-duty.*
40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company ...	... ...	One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn	... ...	One anna.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	... ...	Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY	... ...	Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule.	(*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor [1] or agreed to be [2] given [3].	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
See Exemptions, Schedule II (No. 12 and No. 14 (b)).	(*b*) When at the time of execution possession is not given or agreed to be given as aforesaid [4].	The same duty as a Bond (No. 13) for the amount secured by such deed.

[1] at the time of execution, 8 Bom. 310.
[2] then, 8 Bom. 310.
[3] 10 Cal. 274; 8 Mad. 104.
[4] 8 Mad. 104.

Description of Instrument.	Proper Stamp-duty.	Stamp-duty on Instruments.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public	One rupee.	
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees	One anna.	
47. NOTE OF PROTEST BY THE MASTER OF A SHIP	Eight annas.	
PARTITION ... ... *See Instrument, No.* 37.		
PARTNERSHIP ... *See Instrument, Nos.* 32 *and* 33.		
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India[1]	One hundred rupees[1].	

[1] Repealed from July 1, 1888, by Act V of 1888 (the Inventions and Designs Act).

Stamp-duty on Instruments.

49. POLICY OF INSURANCE. *See Exemption, Schedule II (No 14 (a)).*

Description of Instrument.		*Proper Stamp-duty.*	
		If drawn singly.	If drawn in duplicate, for each part.
(*a*) In the case of Sea-insurance—	Rs.	Rs. A P.	Rs. A. P.
When the amount insured does not exceed...	1,000	0 4 0	0 2 0
And for every further sum of Rs. 1,000 or part thereof in excess of	1,000	0 4 0	0 2 0
(*b*) In case of Fire insurance—			
1. In respect of an original policy for a month or any shorter term—			
When the amount insured does not exceed	1,000	0 2 0	
And for every further sum of Rs. 1,000 or part thereof in excess	1,000	0 2 0	
2. In respect of an original policy for more than one month but not more than three months—			
When the amount insured does not exceed	1,000	0 3 0	
And for every further sum of Rs. 1,000 or part thereof in excess of	1,000	0 3 0	
3. In respect of an original policy for more than three months but not more than six months—			
When the amount insured does not exceed	1,000	0 4 0	
And for every further sum of Rs. 1,000 or part thereof in excess of	1,000	0 4 0	
4. In respect of an original policy for a longer term than six months—			
When the amount insured does not exceed	1,000	0 6 0	
And for every further sum of Rs. 1000 or part thereof in excess of	1,000	0 6 0	
5. In respect of renewing for the purpose of keeping in force, a policy which has been granted for six months or any shorter term and in respect of which, and of the previous renewal whereof (if any), there has not already been paid the duty which would have been chargeable if the policy had originally been granted for a longer term than six months		The same duty as would be payable in respect of an original policy for the amount and term to which the renewal extends; or The excess of the duty which would have been chargeable if the policy had originally been granted for a longer term than six months, over the duty already paid in respect of the policy, and of the previous renewal thereof (if any); Whichever is the smaller sum.	

Description of Instrument.		Proper Stamp-duty. If drawn singly.	Proper Stamp-duty. If drawn in duplicate, for each part.	Stamp-duty on Instruments.
		Rs. A. P.	Rs. A. P.	
49. POLICY OF INSURANCE (*continued*)	(*c*) In the case of any other insurance—			
	When the amount insured does not exceed Rs. 1,000	0 6 0	0 3 0	
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 6 0	0 3 0	
50. POWER-OF-ATTORNEY[1], not being a proxy chargeable under No. 51.	(*a*) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas.		
	(*b*) When authorising one person or more to act in a single transaction other than that mentioned in (*a*) ...	One rupee[1].		
	(*c*) When authorising not more than five persons to act jointly and severally in more than one transaction or generally	Five rupees.		
	(*d*) When authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ...	Ten rupees.		
	(*e*) In any other case ...	One rupee for each person authorised.		
Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.				
PROMISSORY NOTE ...	*See Bill of Exchange, No.* 11.			
PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note	*See Notarial Act, No.* 45.			

[1] 9 Mad. 358.

Stamp-duty on Instruments.

Description of Instrument.		*Proper Stamp-duty.*
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	*See Notarial Act, No.* 45.	
51. PROXY empowering any person to vote at any one meeting of— (*a*) Members of a Company whose stock or funds is or are divided into shares and transferable: (*b*) Municipal Commissioners: (*c*) Proprietors, Members or Contributors to the funds of any Institution.	... .	One anna.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES[1] *See Exemptions, Schedule II* (*No.* 15).	... ...	One anna.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY	(*a*) If the consideration for which the property was mortgaged does not exceed Rs. 1000.	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the reconveyance.
	(*b*) In any other case ...	Ten rupees.

[1] 12 Bom. 103 (receipt by municipality): 6 All. 253.

Description of Instrument.		*Proper Stamp-duty.*
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property [1].	(*a*) If the amount or value of the claim does not exceed Rs. 1000.	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
	(*b*) In any other case ...	Five rupees.
55. RESPONDENTIA BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	... .	The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a Will...	... ...	Ten rupees.
57. SETTLEMENT ...	... ...	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth [2] in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel [3]	... .	One anna.
SPECIFICATION ...	*See Petition, No.* 48.	
59. SURRENDER OF LEASE. *See Exemptions, Schedule II* (No. 16.)	(*a*) When the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
	(*b*) In any other case ...	Five rupees.

Stamp-duty on Instruments.

[1] 9 Bom. 417. See 7 Mad. 350 and 25 Suth. Civ. R. 80, col. 2, for cases in which instruments were held not to come within art. 54.

[2] The words 'as set forth' refer to 'the amount or value,' not to 'the property settled,' 8 Mad. 453.

[3] See the definition of 'vessel,' sec. 3 (20).

Stamp-duty on Instruments.

Description of Instrument.		Proper Stamp-duty.
60. TRANSFER. *See Exemptions, Schedule II* (No. 17).	(*a*) Of shares in a Company or Association.	One-quarter of the duty payable on a Conveyance (No. 21.).
	(*b*) Of any interest secured by a Bond, Lease [1], Mortgage-deed or Policy of Insurance—	
	1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees.	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
	2. In any other case	Five rupees.
	(*c*) Of any property under the Administrator General's Act, 1874, section 31.	Ten rupees.
	(*d*) Of any trust-property from one trustee to another trustee [2] without consideration	Five rupees.
TRUST	*See Declaration, No.* 25; *Revocation, No.* 56.	
VALUATION ...	*See Appraisement, No.* 7.	
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be [3]	... .	Four annas.

[1] 5 Mad. 15; but see 12 Cal. 383, where the transaction was in substance a sale of a share in a partnership.

[2] A transfer of trust-property by the trustees to the beneficiary is liable to duty, if it inserts a nominal consideration, 7 Mad. 350.

[3] From 33 & 34 Vic. c. 97, sec. 88.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
   (*a*) as a condition of enlistment under the Indian Articles of War;
   (*b*) for the immediate[1] purpose of being filed or used in any Court or before the officer of any Court; or
   (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
   (*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of schedule I[2];
   (*b*) for service in British Burma under the Chief Commissioner of that Province, entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner[3];
   (*c*) made by raiyats for the cultivation of the poppy for Government;
   (*d*) made in the form of tenders to the Government of India for or relating to any loan;
   (*e*) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865;
   (*f*) made under the European Vagrancy Act, 1874, section 17.
3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.
5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.
6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.
7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.
8. Bond when executed by—
   (*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;
   (*b*) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act;

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[1] 12 Bom. 276: Maxwell on Statutes, 2nd ed. p. 423.

[2] 10 Mad. 27.

[3] This refers to Act III of 1876, which has been repealed by Act VII of 1883.

Instruments exempted from stamp duty.

(c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871 [1].

11. Entry—

(a) of an advocate, vakíl, or attorney on the roll of any High Court, when he has been previously enrolled in a High Court [2];

(b) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.

12. Instruments—

(a) executed by persons taking advances under the Land Improvement Act, 1871 [3], or by their sureties, as security for the repayment of such advances;

(b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;

(c) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.

13. Leases [4] and counterparts—

(a) Leases of fisheries granted under the Burma Fisheries Act, 1875;

(b) Lease, executed in the case of a cultivator [5] without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees [6];

(c) Counterpart of any lease granted to a cultivator [5].

14. Letter—

(a) of cover or engagement to issue a policy of insurance:

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned;

(b) of hypothecation accompanying a bill of exchange.

15. Receipt [7]—

(a) endorsed on [8] or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;

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[1] Repealed by Act XXI of 1883.

[2] as an advocate, vakíl, or attorney, 8 Mad. 14; see Act IX of 1884, sec. 10. (2).

[3] or where the Land Improvement Loans Act, 1883, is in force, under that Act, see Act XIX of 1883, secs. 1 and 2.

[4] including pattás and kabulyats, sec. 3 (12).

[5] 5 All. 360.

[6] 6 Bom. 691: 10 Bom 173.

[7] 4 Cal. 829.

[8] 10 Mad. 64

(*b*) for any payment of money without consideration [1];

(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;

(*d*) for pay by non commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;

(*e*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;

(*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;

(*g*) given by a headman or lambardár for land-revenue or taxes collected by him;

(*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for [2];

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

(*a*) of a bill of exchange, cheque, or promissory note;

(*b*) of a bill of lading;

(*c*) of a policy of insurance [3];

(*d*) of mortgages of rates and taxes authorised by any Act for the time being in force in British India;

(*e*) of securities of the Government of India;

(*f*) of a warrant for goods (No. 61 of schedule I).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

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[1] This would include the usual acknowledgment of the receipt of fees by counsel, 9 Mad. 140, *Re Beavan*, 23 L. J., Ch. 536, but not a receipt by the secretary or manager of a club acknowledging a payment on account of a club-bill, 10 Mad. 85.

[2] 4 Cal. 829.

[3] 3 Cal. 347.

THE THIRD SCHEDULE.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright	In section five, the words 'without being subject to any stamp or duty.'
X of 1866 ...	The Indian Companies Act.	In section eleven, the words 'shall bear the same stamp as if it were a deed, and'. In section sixteen, the words 'they shall bear the same stamp as if they were contained in a deed.'
XVIII of 1869	The General Stamp Act.	The whole.
VII of 1861 ...	The Indian Emigration Act.	In sections twenty-seven and twenty-nine, the words 'which shall not require a stamp.'
XIX of 1873...	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, the words 'stamped or'.
II of 1874 ...	The Administrator General's Act.	In section thirty-one, the words 'bearing a stamp of ten rupees and'.
IX of 1874 ...	The European Vagrancy Act.	In section seventeen, the words 'may be on unstamped paper and'.
XV of 1876 ...	Bombay Municipal Debentures.	In section two, the words 'and no such indorsement shall be chargeable with any stamp-duty.'

BENGAL SECRETARIAT LIBRARY.

THE INDIAN REGISTRATION ACT, 1877.

ARRANGEMENT OF SECTIONS.

PREAMBLE.

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BENGAL SECRETARIAT LIBRARY.

ACT No. III OF 1877.

As amended by Acts No. XII of 1879, *XIX of* 1883, *VII of* 1886, *and VII of* 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the* 14*th February*, 1877.)

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called 'The Indian Registration Act, 1877:' Short title.

It extends to the whole of British India[1], except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude from its operation[2]; Local extent.

And it shall come into force on the first day of April 1877. Commencement.

2. On and from that day Act No. VIII of 1871 shall be repealed. Repeal of enactments.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enact-

[1] It also applies (with the necessary modifications) to the Haidarábád Assigned Districts, the civil and military station of Bangalore and the rest of Mysore: the parganas in the Rájputána Agency under British administration: the cantonments of Sikandarábád, and Dísah: the Rájputána-Málwa State Railway: the jágír territories of the State of Játh.

[2] In exercise of this power, the scheduled districts of the Madras Presidency have been excluded (*Fort St. George Gazette*, 4 Oct. 1881, Part I, p. 516). In exercise of the power conferred by the Scheduled Districts Act, 1874, sec. 3, cl. (*b*), the Registration Act has been declared not to be in force in the Gáro Hills, the Nága Hills District, and the Khási and Jaintiá Hills District outside the civil station and cantonment of Shillong.

ments thereby repealed shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

'Lease.'

'Lease' includes a counterpart[1], kabúliyat, an undertaking[2] to cultivate or occupy, and an agreement to lease[3]:

'Signature.' 'Signed.'

'Signature' and 'signed' include and apply to the affixing of a mark:

'Immoveable property.'

'Immoveable property' includes[4] land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass:

'Moveable property.'

'Moveable property' includes standing timber[5], growing crops[6] and grass, fruit upon and juice in trees, and property of every other description, except immoveable property:

'Book.'

'Book' includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book:

'Endorsement.' 'Endorsed.'

'Endorsement' and 'endorsed' include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

'Minor.'

'Minor' means a person who, according to the personal law to which he is subject, has not attained majority[7]:

'Representative.'

'Representative' includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot:

'Addition.'

'Addition' means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name:

[1] 5 Bom. H. C. A. C. J. 92 (*bhadekat*).

[2] i.e. an *accepted* undertaking giving the lessee an interest in the thing let, 3 Bom. 21.

[3] but not an unaccepted proposal in writing to take a lease, 7 Cal. 703, 708, 717, and see 3 Cal. 322 (*daul fehrist*).

[4] See 9 Bom. H. C. 99, 106, per Westropp C.J.: 10 Bom. H. C. 281: 13 Ben. 254.

[5] 10 All. 20.

[6] 6 Mad. H. C. 71.

[7] See Act IX of 1875.

'District Court' includes the High Court in its ordinary original civil jurisdiction; and

'District Court.'

'District' and 'Sub-District' respectively mean a district and sub-district formed under this Act.

'District.' 'Sub-District.'

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,

Inspector General of Registration.

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sind, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Branch Inspector General of Sind.

Any Inspector General or the Branch Inspector General of Sind may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

Districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Registrars and Sub-Registrars.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

Offices of Registrar and Sub-Registrar.

and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

Inspectors of Registration offices.

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Cantonments may be declared sub-districts or districts.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector General, and in the case of a district, what authority shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

Absence of Registrar, or vacancy in his office.

10. Whenever any Registrar other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his district.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Sub-Registrar or vacancy in his office.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Appointments under sec. 10, 11 or 12.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Suspension, removal and dismissal.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

Remuneration and establishments.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs:—'The seal of the Registrar (*or* of the Sub-Registrar) of

Seals.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Register-books.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Forms.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

Fire-proof boxes.

PART III.

OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on

Documents of which registration is compulsory.

which Act No. XVI of 1864[1], or Act No. XX of 1866[2], or Act No. VIII of 1871, or this Act[3], came or comes into force (that is to say),—

(*a*) Instruments of gift of immoveable property[4]:

(*b*) Other non-testamentary instruments which[5] purport or operate to create, declare[6], assign, limit or extinguish, whether in present or in future[7], any right, title or interest, whether vested or contingent[8], of the value of one hundred rupees[9] and upwards, to or in immoveable property[10]:

(*c*) Non-testamentary instruments which[11] acknowledge the receipt or payment of any consideration on account of the creation, declaration[12], assignment, limitation or extinction of any such right, title or interest; and

(*d*) Leases[13] of immoveable property from year to year, or for any term exceeding one year[14], or reserving a yearly rent[15]:

[1] 8 Suth. Civ. R. 269, col. 2.

[2] *Hicks* v. *Powell*, L. R., 4 Ch. App. 741.

[3] 2 Bom. 273: 9 Cal. 68.

[4] whatever be the value of the property, 2 Ben. Appx. 46.

[5] in themselves, 9 All. 108.

[6] 4 Bom. 590. The word 'declare' here implies, not a mere statement of fact, but a declaration of will constituting a right, 5 Bom. 232, per West J.

[7] The words 'in future' refer to estates in remainder or reversion or otherwise deferred in enjoyment, 2 Bom. 353.

[8] If a document only entitles a person to a future right it is not within this clause, 8 Cal. 858, per Wilson J.

[9] 10 Cal. 82. The value of the interest created by a mortgage-bond is the sum by paying which that interest could be determined, 5 Mad. 119: 6 Mad. 422: see 5 All. 447. As to determining this value, see also 15 Suth. Civ. R. 364, col. 2, and 558: 4 Cal. 61: 2 Bom. 353: 1 Mad. 378: 5 Mad. 119, 214. But in the N. W. Provinces, see 6 N. W. P. 257: 1 All. 274: 2 All. 40, 96, 216, 688: 3 All. 1, 157, 422. The Courts now appear to agree that the value of a mortgage is to be estimated by the amount of the principal money lent, and without any regard to the duration of the relation of mortgagor and mortgagee, or to the rate or continuance of the interest payable. And see 20 Suth. Civ. R. 291, col. 1 (instrument operating as a charge): 12 Bom. H. C. 141 (family arrangement): 1 Bom. 267 (assignment of decree for sale of mortgaged premises or payment of mortgage money): 2 Bom. 97 (assignment for less than rs. 100 of mortgage for more). That a document amounting merely to an agreement to mortgage does not require registration under sec. 17, see 10 Cal. 315.

[10] See above, p. 1104.

[11] on their face, 9 All. 108.

[12] 5 Bom. 232.

[13] See 9 Cal. 865. The word 'leases' includes an agreement if the parties, though contemplating the subsequent execution of a formal document, intend to create a present demise, 10 Bom. 101.

[14] 13 Suth. Civ. R. 468: 15 ibid. 170, col. 2: 4 N. W. P. 36: 3 Mad. 358.

[15] 2 Ben. A. C. J. 75: 8 All. 405 (tenancy at will). As to the documents mentioned in clauses (*a*), (*b*), (*c*) and (*d*), see infra, sec. 50.

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees[1].

Nothing in clauses (*b*) and (*c*) of this section applies to

(*e*) any composition-deed;

Composition deeds;

(*f*) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

Transfers of shares and debentures in Land Companies;

(*ff*) any debenture issued by any such Company, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures[2], or

(*g*) any endorsement upon or transfer of any debenture issued by any such Company;

Documents merely creating right to obtain other documents.

(*h*) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will when executed create, declare, assign, limit or extinguish any such right, title or interest[3];

(*i*) decrees[4] and orders of Courts and awards;

(*j*) grants of immoveable property by Government;

(*k*) instruments of partition made by revenue-officers;

(*l*) certificates and instruments of collateral security granted under the Land Improvement Act, 1871[5].

(*m*) orders granting loans under the Agriculturists' Loans Act, 1884[6], and instruments for securing the repayment of loans made under that Act[7].

(*n*) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any

[1] 4 Mad. 381: *N. W. P. Gazette*, 5 July 1871, p. 810: *Oudh Gazette*, 17 June, 1871, p. 372.

[2] Inserted by Act VII of 1886.

[3] 5 Bom. 143: 7 Bom. 310: see 5 Mad. 115.

[4] 11 Bom. 506.

[5] Where the Land Improvement Loans Act, XIX of 1883, is in force, read '(*l*) orders granting loans and instruments of collateral security granted under the Land Improvement Loans Act, 1883.'

[6] Act XII of 1884.

[7] Inserted by Act VII of 1886.

other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage[1].

(*o*) a certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue officer[2].

Authorities to adopt.

Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered[3].

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(*a*) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property:

(*b*) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest[4]:

(*c*) leases of immoveable property for any term not exceeding one year[5], and leases exempted under section 17:

(*d*) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property:

(*e*) wills:

(*f*) all other documents not required by section 17 to be registered[6].

Documents in language not understood by registering officer.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents containing interlineations,

20. The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank,

[1] Inserted by Act VII of 1886, sec. 4.

[2] Inserted by Act VII of 1888, sec. 65.

[3] Also memoranda appointing new trustees under the Religious Societies' Act, I of 1880: see sec. 3 of that Act.

[4] As to the documents mentioned in clauses (*a*) and (*b*) see sec. 50 infra. It will, however, be remembered that in every part of British India except the Presidency of Bombay, the Panjáb and Burma, optional registration is now virtually abolished by the Transfer of Property Act, sec. 54. See 8 Cal. 597, per Garth C.J.

[5] 3 Bom. 21: 14 Suth. Civ. R. 68: 5 Bom. A. C. J. 92: 8 All. 198.

[6] As to the exceptions under sec. 17 see 2 Bom. 281.

erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration[1]. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

blanks, erasures, or alterations.

21. (*a*) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of parcels.

(*b*) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered[2]. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey[3].

(*c*) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Documents containing maps or plans.

22. Failure to comply with the provisions contained in section 21, clause (*b*), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property[4].

Failure to comply with rules as to description of houses and land.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution[5],

Time for presenting documents.

[1] But see 4 Mad. H. C. 101.

[2] See Davidson's *Precedents*, 5th ed. vol. i. p. 53. [3] Ibid. pp. 64, 65.

[4] 4 Mad. H. C. 91, 101.

[5] 5 All. 84. The conduct of the parties concerned cannot affect this rule, 5 Cal. 820; and the registering officer acts without authority, if he registers a document presented after the proper time, 10 Bom. H. C. 98. Where a sale-deed was not presented in time owing to the seller's fraud, he cannot avail himself of sec. 23 to defeat his own contract, 3 Agra, 201. As to the procedure where a document is presented for registration in due time by one of the executants, but the others fail to appear within the time prescribed, see 11 Ben. 20. The Act fixes no time within which the registration must be completed, 15 Ben. 228: 11 Cal. 750.

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Where delay in presentation is unavoidable.

24. If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of British India.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

(*a*) that the instrument was so executed, and

(*b*) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Where office is closed on last day of period.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

Place for registering documents relating to land.

28. Save as in this Part otherwise provided, every document mentioned in section 17, clauses (*a*), (*b*), (*c*) and (*d*), and section 18, clauses (*a*), (*b*) and (*c*), shall be presented for registration in the

office of a Sub-Registrar within whose sub-district the whole or some portion[1] of the property to which such document relates is situate[2].

Place for registering other documents.

29. Every document other than a document referred to in section 28 and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration by Registrar.

30. (*a*) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him[3].

Registration by Registrar at Presidency-town and Lahore.

(*b*) The Registrar of a district including a Presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit.

But such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration[4] or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such

[1] i. e. some *substantial* portion, 7 All. 590, *sed qu.*

[2] As to non-compliance with this rule, see 7 N. W. P. 119: 4 All. 14: 7 All. 590.

[3] There is no appeal against an order refusing to exercise this authority, 14 Suth. Civ. R. 194; and see 1 Ben. F. B. 58; 3 Ben. O.C. J. 60.

[4] 6 Bom. 96.

for registration.

registration be compulsory or optional, shall be presented at the proper registration-office,

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned[1].

Powers-of-attorney recognisable for purposes of sec. 32.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognised[2] (that is to say),—

(*a*) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides[3]:

(*b*) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate:

(*c*) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India:

Proviso as to persons infirm, or in jail, or exempt from appearing in court.

Provided that the following persons shall not be required to attend at any registration-office or court for the purpose of executing any such power-of-attorney as is mentioned in clauses (*a*) and (*b*) of this section:—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

persons who are in jail under civil or criminal process; and

persons exempt by law from personal appearance in court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution,

[1] The stamp on such powers is eight annas; see supra, p. 1091.

[2] But see 4 All. 384, from which it would appear that these words are a mere direction to the registering officer.

[3] See above, p. 479, note 1.

the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and[1] examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by registering officer.

34. Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document[2], or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26[3]:

Provided that if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The Registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(*b*) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(*c*) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

[1] after satisfying himself as to the identity of the person purporting to be principal: see 17 Suth. P. C. 523, 524.

[2] When a document is executed by one of two parties on behalf of himself and the other it is sufficient if the person actually executing appear before the registering officer, 22 Suth. Civ. R. 68, col. 2.

[3] These words are merely a direction to the registering officer for the benefit of the parties; and if he registers without the appearance of the executants this is only a defect of procedure within the meaning of sec. 87 infra. See 15 Ben. 228, followed in 11 Cal. 750.

Procedure on admission of execution.

35. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution[1] of the document;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive[2].

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other person contemplated by this Act, examine any one present in his office.

Procedure on denial of execution, etc.

If any of the persons by whom the document purports to be executed deny its execution[3], or

if any such person appears to the registering officer[4] to be a minor[5], an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead[4]: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

[1] 4 All. 40.

[2] He has nothing to do with the recitals in the document, or its possible operation as regards third parties, 16 Suth. Civ. R. 180. And he cannot refuse to register because the full consideration has not been paid, 1 Ben. O. C. J. 47, or because an executant sets up a collateral agreement which would render the document of no legal force, 4 Mad. H. C. 425, or says that he executed under compulsion, 8 Ben. Appx. 26: and see 12 Ben. 492. But if an instrument chargeable with stamp-duty is not properly stamped, the registering officer must refuse to register and impound the instrument, Act I of 1879, secs. 33, 34.

[3] Refusal or neglect to admit execution is a denial of execution, 5 Cal. 445: 11 Bom. 691. As to suing in such cases to have the document registered, see sec. 77 infra.

[4] See Act No. XII of 1879, section 104. The amendments made thereby were suggested by the remarks of the Judicial Committee in 1 All. 465. When a father executed a mortgage-bond on his minor son's behalf, but for the purposes of registration the minor was not represented by any one, the Allahabad High Court held that the bond did not affect the property comprised therein, so far as the minor was interested, 5 All. 599.

[5] 8 Cal. 967.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

Procedure where appearance of executant or witness is desired.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Issue and service of summons.

38. A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in court[1], and who would but for the provision next hereinafter contained be required to appear in person at the registration-office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination[2].

Persons exempt from appearance at registration-office.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

Law as to summonses, commissions and witnesses.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor, or after his death the donee, of any authority to

Persons entitled to present wills and authorities to adopt.

[1] Supra, p. 709.

[2] 4 All. 40.

adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt.

41. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(*a*) that the will or authority was executed by the testator or donor, as the case may be;

(*b*) that the testator or donor is dead, and

(*c*) that the person presenting the will or authority is, under section 40, entitled to present the same[1].

PART IX.

OF THE DEPOSIT OF WILLS.

Deposit of wills.

42. Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

Procedure on deposit of wills.

43. On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal of sealed cover deposited under s. 42.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly authorised agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Proceedings on death of depositor.

45. If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is

[1] A sub-registrar acting under this section is a 'Court' within sec. 195 of the Code of Cr. Proc., 10 Mad. 154.

satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

When such copy has been made, the Registrar shall re-deposit the original will. Re deposit.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will [1]. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid. Saving of Act X of 1865, s. 259.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made [2], and not from the time of its registration. Time from which registered document operates.

48. All non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement [3] or declaration [4] relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession [5]. Registered documents relating to property when to take effect against oral agreements.

[1] 3 Bom. O. C. J. 135.

[2] 8 Bom. 182.

[3] i. e. something which, if correct in point of form, is binding on the maker, 3 Ben. A. C. J. 315. An oral agreement' means an agreement merely oral, not, for instance, a mortgage by deposit of title-deeds under a verbal agreement to secure payment of a debt.

[4] i.e. a declaration of his wishes by the owner with reference to his property, not amounting to a contract, and which the maker is at liberty to recall, 3 Ben. A. C. J. 315; but see 10 Cal. 250, where it was held that when *A* purchases, even under a registered deed of sale, with notice of a prior agreement for sale to *B* of the same property, *A* will not be allowed to retain the property as against *B*: see also 12 Bom. H. C. 179.

[5] i.e. the only oral alienations of which the law can take notice in competition with registered instruments, are those which are properly established by evidence of possession, 5 Cal. 336, per Pontifex J.; and see 6 Cal. 538: 4 Bom. 126.

Where *A* pursuant to an agreement to sell certain land to *B* directs the tenants to pay the rent to *B*, and the tenants agree to pay accordingly, 'possession' is delivered within the meaning of this section, 9 Mad. 267.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered,

shall affect any immoveable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting[1] such property or conferring such power[2],

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

50. Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 17, and clauses (*a*) and (*b*) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered[3] document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not[4].

Nothing in the former part of this section[5] applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (*e*), (*f*), (*ff*), (*g*), (*h*), (*i*)[6], (*j*), (*k*), (*l*), (*m*), (*n*), and (*o*)[7] of the same section.

[1] i.e. so far as it affects, 9 Cal. 524.

[2] See for illustrations 4 Cal. 83: 8 Mad. 182: 2 Bom. 273: 4 Bom. 590: 4 All. 232; and then the Evidence Act, sec. 91, excludes secondary evidence of its contents: but where the transaction is divisible, see 5 Cal. 611: 3 All. 229: 4 All. 3. So an unregistered bond creating an interest in land in excess of rs. 100 may be received as evidence of the personal obligation, 9 Cal. 520: 7 Mad. H. C. 296: 5 Mad. 119. So where the unregistered document is tendered as proof of an acknowledgement of liability, from the date of which a fresh period of limitation runs, 5 Cal. 215; and see 3 All. 523

[3] The Act assumes that the two are antagonistic, 6 Bom. 193, and see 9 Mad. 495.

[4] This section and the corresponding section of Act VIII of 1871 have given rise to much discussion in the Courts. See in Bengal, 5 Cal. 336: 7 Cal. 753: 8 Cal. 597: 10 Cal. 424: 11 Cal. 667: in Madras, 3 Mad. 46: 5 Mad. 73, 139: 6 Mad. 88, 153, 174: 8 Mad. 167: in Bombay, 6 Bom. 495, and 515: 9 Bom. 427: 10 Bom. 105: in the N. W. Provinces, 6 All. 164, 444: 8 All. 23, 540.

Where both documents are registered, see 2 Bom. 299 and 662: 9 Bom. 165.

Where document *A* executed while Act VIII of 1871 was in force was optionally registrable thereunder, and was not registered, and where document *B* relating to the same property executed after Act III of 1877 had come into force was compulsorily registrable thereunder, and was registered, see 2 All. 431, 851: 5 All. 593: 7 Cal. 570: 11 Cal. 661.

Fortunately, as above remarked, optional registration is now virtually abolished, by the Transfer of Property Act, except in the Bombay Presidency, the Panjáb and Burma, to which territories that Act has not yet been extended.

That sec. 50 has no retrospective effect, see 4 All. 227: 5 Bom. 442 and 653. But see 3 Mad. 73.

[5] 9 Mad. 119.

[6] Therefore the omission to register a decree does not render it ineffectual as against subsequent registered assignments or decrees. See 3 Mad. 71 and 6 Mad. 88.

[7] See Act VII of 1888, s. 65, cl. (3).

Explanation.—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, 'unregistered' means not registered according to such Act[1], and, where the document is executed after the first day of July 1871, not registered under Act No. VIII of 1871 or this Act[2].

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(*A*). *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. The following Books shall be kept in the several offices hereinafter named (that is to say)—

In all registration-offices—

Book 1, 'Register of non-testamentary documents relating to immoveable property;'

Book 2, 'Record of reasons for refusal to register;'

Book 3, 'Register of wills and authorities to adopt;' and

Book 4, 'Miscellaneous Register.'

In the offices of Registrars—

Book 5, 'Register of deposits of wills.'

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89[3] which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (*d*) and (*f*) of section 18, which do not relate to immoveable property[4].

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

Endorsements on document presented.

Receipt for document.

Documents admitted to registration to be copied.

52. The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

[1] and 'registered' means 'registered according to any such Act,' see 2 Mad. 147.

[2] 'document' as used in this section means document legally enforceable, 8 All. 542, per Straight J.

[3] See Act No. XII of 1879, sec. 105.

[4] 7 Cal. 196.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

Entries to be numbered consecutively.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current indexes and entries therein.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to be made by registering officers.

55. Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III, and Index No. IV.

Index No. I shall contain the names and additions[1] of all persons executing[2] and of all persons claiming under every document entered or memorandum filed in Book No. I.

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

Index No. III shall contain the names and additions[1] of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

Index No. IV shall contain the names and additions[1] of all persons executing and of all persons claiming under every document entered in Book No. 4.

Extra particulars in Indexes.

Indexes Nos. I, II, III and IV shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

Copy of entries in sub-registrars' Indexes Nos. I, II and III to be sent to Registrar, and filed.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Every Registrar receiving such copy shall file it in his office.

[1] See above, p. 1104.

[2] This provides for disclosing the parties who have really executed, and precludes the inconvenience which might otherwise arise from a document being registered when some only of the parties have executed it

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Inspection of certain Books and Indexes.

Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Certified copies of entries.

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

Copies admissible in evidence.

(B). As to the Procedure on admitting to Registration.

58. On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89[1], there shall be endorsed from time to time the following particulars (that is to say),—

Particulars to be endorsed on documents admitted to registration.

(*a*) the signature and addition[2] of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(*b*) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(*c*) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution[3].

[1] Act VII of 1886, sec. 3, cl. (2).
[2] Supra, p. 1104.
[3] An admission so endorsed, though strong, is not conclusive evidence of the receipt, 15 Suth. 280: 1 Agra, 160.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal[1].

Endorsements to be dated and signed.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered.

60. After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word 'registered,' together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered[2] in manner provided by this Act[3], and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

Endorsements and certificate to be copied.

61. The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in book No. 1.

Document to be returned.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Procedure on presenting document in language unknown to registering officer.

62. When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections

[1] See 4 Mad. H. C. 101: 3 Ben. O. C. J. 60.

[2] not that it was executed, 6 Suth. Civ. R. 105, col. 1: 18 ibid. 238: and see 15 ibid. 15. The mere registration of a document does not bar a suit to contest the fact of its execution, 8 Ben. Appx. 28. If the Court find that a document requiring registration has been registered by an officer who had no jurisdiction to do so, it will refuse to receive it in evidence, 14 Cal. 449.

[3] 6 Cal. 25: 1 All. 465 (S. C. L. R. 4 I. A. 166): 4 All. 14 and 384; 5 All. 84.

57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. Every registering officer may at his discretion administer an oath[1] to any person examined by him under the provisions of this Act.

Power to administer oaths.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Record of substance of statements.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(*C*). *Special Duties of Sub-Registrar.*

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure on registration of document relating to land situate in several sub-districts.

65. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

Procedure where document relates to land situate in several districts.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(*D*). *Special Duties of Registrar.*

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure on registering documents relating to land.

[1] This includes affirmation, supra, vol. I. p. 489.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure on registration under section 30, clause (*b*).

67. On any document being registered under section 30, clause (*b*), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(*E*). *Of the controlling Powers of Registrars and Inspectors General.*

Registrar to superintend and control Sub-Registrars.

68. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

Inspector General to superintend registration-offices.

His power to make rules.

69. The Inspector General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each district;

declaring what territorial divisions shall be recognised under section 21;

regulating the amount of fines imposed under sections 24 and 34, respectively;

regulating the exercise of the discretion reposed in the registering officer by section 63;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;

declaring the holidays that shall be observed in the registration-offices;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette[1] and shall then have the same force as if they were inserted in this Act[2].

His power to remit fines.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

PART XII.

OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded.

71. Every Sub-Registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words 'registration refused' on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document

[1] See *Fort St. George Gazette*, Supplement, 13 March, 1883: *Bombay Government Gazette*, 7 March, 1878, Part I, pp. 127–156, and the numbers of the *Calcutta Gazette* cited in Macpherson's *Liste*, p. 347: the *Panjab Gazette*, 16 Dec. 1880, Part I, p. 427: the *Central Provinces Gazette*, 13 April 1881, 30 Nov. 1883: the *British Burma Gazette*, Part II, 2 Dec. 1879, p. 260: 1 Nov. 1880, p. 395: 29 Aug. 1881, p. 254: 31 July 1883, p. 236: the *Assam Gazette*, 29 Dec. 1877, Part I, p. 476.

[2] This section does not empower the Registrar General to make a rule directing by what particular description of evidence a person producing a deed to be registered shall prove his right to have it registered. Nor can he frame a special law different from the ordinary law of evidence, as to what fact shall be proved by oral, and what by documentary evidence, 16 Suth. Civ. R. 180.

so endorsed unless and until, under the provisions hereinafter contained[1], the document is directed to be registered.

Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.

72. Except where the refusal is made on the ground of denial of execution[2], an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order:

and if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where Sub-Registrar refuses to register on ground of denial of execution.

73. When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified[3] by the applicant in manner required by law for the verification of plaints[4].

Procedure of Registrar on such application.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall as soon as conveniently may be enquire—

(*a*) whether the document has been executed[5];

(*b*) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

[1] See sec. 73.

[2] As to what 'denial of execution' includes, see 5 Cal. 445.

[3] As to the absence of verification, see 10 Cal. 604.

[4] Supra, p. 495.

[5] 7 Cal. 736.

Order to register and procedure thereon.

75. If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court; and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by Registrar.

76. Every Registrar refusing—

(*a*) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(*b*) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

Suit in case of refusal.

77. Where the Registrar refuses[1] to order the document to be registered, under section 72 or section 76, any person claiming under such document[2], or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit[3] for a decree directing the document to be

[1] 13 Cal. 164.

[2] 1 All. 318.

[3] 5 Cal. 445: 7 Mad. 535: 3 All. 397, followed in 9 Cal. 150, 851, and 6 All. 460. The Limitation Act, sec. 5, applies, 8 Cal. 910. The Registrar need not be a party, 5 Cal. 445: 8 Bom. 269. An appeal lies from a decree in such a suit, which must be brought in the Court of the lowest competent jurisdiction, 8 Bom. 269. As to the court-fee (rs. 10) payable on such appeals, see 8 Cal. 515.

registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

Fees to be fixed by Local Government.

78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents:

for searching the registers:

for making or granting copies of reasons, entries or documents, before, on or after registration:

And of extra or additional fees payable—

for every registration under section 30:

for the issue of commissions:

for filing translations:

for attending at private residences:

for the safe custody and return of documents;

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

Publication of fees.

79. A table of the fees so payable shall be published in the official Gazette [1], and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

OF PENALTIES.

Incorrectly endorsing,

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act,

[1] See Macpherson's *Lists*, 1884, pp. 114 (Madras), 232 (Bombay), 347 (Bengal), 433 (N. W. Provinces and Oudh), 465 (Panjáb), 510 (Central Provinces), 538 (Burma), 575 (Coorg), 597 (Andaman and Nicobar Islands).

who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code[1], to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both[2]. copying, etc. documents with intent to injure.

82. Whoever commits any of the following offences shall be punishable with imprisonment[3] for a term which may extend to seven years, or with fine, or with both: Making false statements.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer[4] acting in execution of this Act, in any proceeding or inquiry[5] under this Act;

(*b*) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; Delivering false copy or translation.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act[6]; False personation.

(*d*) abets within the meaning of the Indian Penal Code[7] anything made punishable by this Act[8]. Abetment of offences.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sind, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed[9]. Commencement of prosecutions.

[1] sec. 44.

[2] 20 Suth. Cr. R. 49.

[3] including a sub-registrar, 6 Suth. Cr. R. 81.

[4] rigorous or simple, Act I of 1868. No sanction is necessary to instituting a prosecution under sect. 82, 11 Cal. 566, dissenting on this point from 10 Cal. 604.

[5] 23 Suth. Cr. R. 55.

[6] 2 Ben. App. Cr. 25.

[7] sec. 107 *et seq.*

[8] 7 Suth. Cr. R. 99: 8 ibid. 16, where Macpherson J. held (under the corresponding section of Act XX of 1866) that the abettor might be punished more severely than his principal.

[9] 10 Suth. Cr. R. 5. As to trial by a magistrate who has instituted the prosecution in his capacity of sub-registrar, see 8 Ben. 422. As to a sub-registrar's duty when an offence in the registration of a document is committed before him, see 4 Ben. Appx. 69.

Jurisdiction.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second [1] class: [2]

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

Fines.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency-towns, in the manner prescribed by the Code of Criminal Procedure [3], and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force [4].

Registering officers to be 'public servants.'

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code [5].

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words 'judicial proceeding' shall include any proceeding under this Act.

A Registrar shall, but a Sub-Registrar shall not [6], as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

PART XV.

MISCELLANEOUS.

Unclaimed documents.

85. Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Exemption of registering officers.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Their acts not invalidated by defect in appointment, etc.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure [7].

[1] See Act No. XII of 1879, section 106. As to the former law see 6 Ben. 692: 5 Bom. H. C., Cr. Ca. 7.

[2] Act XII of 1872, sec. 106.

[3] Supra, p. 200.

[4] See Act V of 1861, secs. 37-40: in Madras, XXIV of 1859, sec. 52.

[5] See 20 Suth. Cr. R. 49.

[6] Inserted in consequence of 13 Ben. Appx. 40. But clause 3 of sec. 84 of the Registration Act seems now impliedly repealed by Act X of 1882, sec. 483, supra, p. 233.

[7] For illustrations of defects in procedure see 15 Ben. 228: (S. C. L. R. 2 I. A. 210): 6 Bom. 96: 7 N. W. P.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58. Registration of documents executed by Government officers, etc.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a certificate under the Land Improvement Act, 1871, shall send a copy of such certificate[1] to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy[2] in his Book No. 1. Certificates under Land Improvement Act, 1871.

Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1[2]. Certificate under Civil Procedure Code, sec. 316.

Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1[3]. Mortgages under Agriculturists' Loans Act, 1884.

119: 4 All. 40. For instances of defects not cured by sec. 87, see 10 Bom. H. C. 98: 4 All. 87.

[1] Where the Land Improvement Loans Act XIX of 1883 is in force, read: 'Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order.'

[2] See Act No. XII of 1879, sec. 107: 3 Mad. 41: 5 All. 84.

[3] Act VII of 1886, sec. 3, cl. (3).

Exemptions from Act.

Exemption of certain documents executed by or in favour of Government.

90. Nothing contained in this Act or in Act No. VIII of 1871 or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

(*a*) Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(*b*) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(*c*) Documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwáris or other officers charged with the preparation of village-records.

(*d*) Sanads, inám title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land.

(*e*) Notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land[1].

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses (*a*), (*b*), (*c*) and (*e*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese registration-rules confirmed.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

[1] Act VII of 1886, sec. 6.

THE SECOND APPENDIX.

EACH of the two Acts, VI and VII of 1888, comprised in this Appendix makes important amendments in the Code of Civil Procedure. Unfortunately these Acts arrived in England after the body of the Code had been printed off, too late, therefore, for the amendments to be inserted in their proper places.

Act VI of 1888 alters the rules relating to imprisonment for debt. It prohibits the arrest or imprisonment of women in execution of decrees for money, and thus makes the law what it is assumed to be in the Married Women's Property Act, 1874, sec. 8. In the case of male debtors, it gives every Court executing a decree a discretionary power to refuse a warrant of arrest at the pleasure of a decree-holder, and section 4 (based on the Presidency Small Cause Courts' Act, 1882, sec. 30, and on the Debtors' Bill, 1886, sec. 4) provides that when a judgment-debtor who has been arrested is brought before the Court before being committed to prison, the Court may order his release if he is unable to pay the amount of the decree and there is no reason to suppose that he has obstructed or will obstruct the decree-holder in the execution of the decree. Act VI of 1888.

Section 8 provides that when a person in ill-health has been arrested, it shall be in the discretion of the Court to refuse to commit him to prison, and that when a person has been released from arrest or imprisonment on the ground of illness, he is liable to be re-arrested.

Of Act VII of 1888 the following sections require special notice :— Act VII of 1888.

Section 3 is intended to preserve the summary character of rent-litigation, which the rulings reported in 9 Cal. 295 and 5 All. 406 would otherwise have destroyed.

Section 5 removes one of the objections to maintaining suits in British India on judgments of foreign Courts.

The need of section 6 is felt where, as in the Panjáb and the Lower Provinces, large areas are subject to fluvial action.

Sections 10, 11, 15 and 16 are intended to accommodate the language of the Code more closely to the system of process-serving which prevails in some parts of India.

Section 12 admits of summonses being sent for service to Superintendents of foreign States and to Courts established or continued by the Governor-General in Council in foreign territory, as well as to British Residents and Agents.

Section 17 empowers the Local Government to require evidence to be recorded in English. It follows the Code of Criminal Procedure, sec. 357 *et seq.*, as well as local provisions in the Central Provinces, Oudh, and Burma.

Section 21 makes sec. 216 of the Code applicable not only to the equitable cases of set-off mentioned in 7 All. 284, but also to any equitable right to set-off a sum which is not a debt.

Section 24 empowers Courts in British India to send decrees for execution to those Courts out of British India which are authorised, by sec. 229 of the Code, to cause their decrees to be executed by British Indian Courts.

Section 28 exempts from liability to sale in execution of a decree of a civil Court any moveable property which any local law exempts from liability to sale in satisfaction of an arrear of land-revenue.

Section 31, sub-section 4, declares Chapter XX of the Code inapplicable to the Presidency towns. The inconvenience of having two different systems of insolvency-law in force in the same place is obvious.

The object of sections 37, 38, 40, and 41 is to remove the difficulties which have recently attended litigation on behalf of the minor Rájá of Kapurthala, one of the ruling chiefs of the Panjáb, and a landholder in that Province and in Oudh.

Sections 49–52 extend the discretion of Appellate Courts, which was thought to be unduly limited by the parts of the Code to which these sections refer.

Section 60 gives power to refer to the High Court questions as to jurisdiction in small causes, and enables the District Courts to submit for revision proceedings had under mistake as to such jurisdiction.

Act VII of 1888 also amends the Limitation Act and the Registration Act. Of these amendments the most important is that made by sections 32, 53, and 66, which extend to six months the period of limitation for applications under sections 365, 366, and 368 of the Code, and provide for such applications being admitted after that period in exceptional cases. They have been made in their proper places, supra, pp. 1000, 1001, 1110, 1120.

ACT No. VI OF 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 23rd March*, 1888.)

AN ACT TO AMEND THE LAW RELATING TO IMPRISONMENT FOR DEBT.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; It is hereby enacted as follows:—

Title, commencement and extent.

1. (1) This Act may be called the Debtors Act, 1888; and

(2) It shall come into force at once.

(3) The several portions thereof have the same local extent as the enactments to which they respectively relate.

Prohibition of arrest or imprisonment of women in execution of decrees for money.

2. After section 245 of the Code of Civil Procedure the following sections shall be inserted, namely:—

'245 A. Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Power to permit other judgment-debtors to show cause against imprisonment.

'245 B. (1) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

'(2) If appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.'

Amendment of s. 250 of the Code.

3. In section 250 of the said Code, between the word 'shall' and the word 'issue,' the following shall be inserted, namely:—

'subject to the provisions of sections 245 A and 245 B'.

Proceedings on appearance of judgment-debtor in obedience to notice under s. 245 B, or after arrest in execution of decree for money.

4. After section 337 of the said Code the following shall be inserted, namely:—

'337 A. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245 B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

'(2) Before making an order under sub-section (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

'(*a*) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account;

'(*b*) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;

'(*c*) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors;

'(*d*) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it;

'(*e*) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (*b*) of this sub-section.

'(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

'(4) A judgment-debtor released under this section may be re-arrested.

'(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested

if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.'

Security for costs in money-suit by woman.

5. To section 380 of the said Code the following shall be added, namely:—

'On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.'

Amendment of s. 640.

6. In section 640 of the said Code, after the words 'from arrest in execution of civil process' the words 'in any case in which the arrest of women is not prohibited by this Code' shall be added.

Amendment of s. 642.

7. In section 642 of the said Code, for the words and figures 'except as provided in sections 256 and 643' the following shall be substituted, namely:—

'except as provided in section 337 A, sub-section (5), and sections 256 and 643'.

8. After section 652 of the said Code the following shall be added, namely:—

Cancellation of warrant of arrest.

'653. (1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Release on ground of illness of judgment-debtor.

'(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

'(3) When a judgment-debtor has been committed to jail, he may be released therefrom—

'(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

'(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

'(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be.'

Partial repeal of Act III of 1874 and Reg. I of 1877.

9. The last sixteen words of section 8 of the Married Women's Property Act, 1874, and the whole of section 31 of the Ajmere Courts Regulation, 1877, are hereby repealed.

Amendment of parts of Madras Act VIII of 1865 and India Act XII of 1881.

10. (1) For the first fifty-five words of section 48 of the Act of the Governor of Fort St. George in Council, No. VIII of 1865, the following shall be substituted, namely:—

'No person shall be imprisoned as a defaulter for a longer period than six months whatever the amount of the arrears may be, nor for a longer period than six weeks if the arrears do not exceed fifty rupees.'

(2) For the proviso to section 163 of the North-Western Provinces Rent Act, 1881, the following shall be substituted, namely:—

'Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed six weeks when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months in any other case.'

ACT No. VII OF 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 23rd March, 1888.)

AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE THE INDIAN REGISTRATION ACT, 1877, AND THE INDIAN LIMITATION ACT, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure, the Indian Registration Act, 1877, and the Indian Limitation Act, 1877; It is hereby enacted as follows:—

Title and commencement.

1. (1) This Act may be called the Civil Procedure Code Amendment Act, 1888; and

(2) It shall come into force on the first day of July, 1888.

Construction.

2. (1) In this Act, unless there is something repugnant in the subject or context, 'section' means a section, 'schedule' a schedule, and 'Chapter' a Chapter, of the Code of Civil Procedure.

(2) Any reference in any enactment heretofore passed or hereafter to be passed to any Act amended by this Act shall, so far as may be, be read as if made to that Act as so amended.

3. The following shall be inserted after section 4, namely:—

Power to modify the Code in its application to Revenue Courts.

'4 A. (1) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent[1] the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

'(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which

[1] 9 Cal. 295: 5 All. 406.

its cognizance is not barred by any enactment for the time being in force.'

Repeal of part of section 8.

4. The second paragraph of section 8 is hereby repealed.

Addition to s. 14.

5. To section 14 the following shall be added, namely:—

'Where a suit is instituted in British India on the judgment of any foreign Court[1] in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty[2] or any predecessor of Her Majesty or a Supreme Consular Court established by an Order of Her Majesty in Council[3], the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed.'

Place for institution of suit where local limits of jurisdiction of Courts are uncertain.

6. The following shall be inserted after section 16, namely:—

'16A. (1) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

'Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

'(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto.'

Where cause of action arises in suits on contract.

7. In section 17, after Explanation II, the following shall be inserted, namely:—

'EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

'(i) the place where the contract was made;

'(ii) the place where the contract was to be performed or performance thereof completed;

[1] 6 Bom. 292: 6 Mad. 191.

[2] Such as the Supreme Court of the Straits Settlement.

[3] e.g. Her Majesty's Supreme Court for China and Japan at Shanghai.

'(iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable[1].'

8. In section 27 there shall be inserted after the words 'the Court may' the words 'at any stage of the suit[2],' and after the words 'any other person or persons' the words 'with his or their consent.' Amendment of s. 27.

9. For section 53 the following shall be substituted, namely :— When plaint may be rejected, returned for amendment, or amended.

'53. The plaint may, at the discretion of the Court,—

'(*a*) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action;

'(*b*), at, or at any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

'(i) is not signed and verified as hereinbefore required,

'(ii) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,

'(iii) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or

'(iv) is not framed in accordance with the provisions of section 42;

'(*c*) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit[3]:

'Provided that a plaint shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character[4].

'When a plaint is amended under this section the amendment shall be attested by the signature of the Judge.'

10. For section 72 the following shall be substituted, namely :— Delivery or transmission of summons for service.

'72. (1) If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

[1] 4 All. 423: 5 All. 277.

[2] 6 Cal. 370: cf. rules under Judicature Acts, XVI, r. 2.

[3] 9 Cal. 695: 6 Mad. 239: 5 Bom. 609: 7 All. 79.

[4] L. R., 14 I. A. 111.

'(2) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post or in such other manner as the Court may direct.'

Amendment of s. 82.

11. In section 82, for the first twenty words the following shall be substituted, namely:—

'When a summons is returned under section 80, the Court shall if the return under that section has not been verified by the affidavit of the serving-officer, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings.'

Service in foreign territory through British Resident or Court.

12. For section 90 the following shall be substituted, namely:—

'90. If there is a British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Resident, Agent or Superintendent or the Judge of the Court returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.'

Endorsement of documents admitted in evidence.

13. For sections 141 and 142 the following shall be substituted, namely:—

'141. (1) Subject to the provisions of the next following sub-section, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

'(*a*) the number and title of the suit,

'(*b*) the name of the person producing the document,

'(*c*) the date on which it was produced, and

'(*d*) a statement of its having been so admitted,

and the endorsement shall be signed by the Judge.

'(2) If a document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed by the Judge.

'141 A. (1) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry.

Endorsements on copies of admitted entries in books, accounts, and records.

'(2) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

'(i) where the record, book or account is produced on behalf of a party, then by that party, or

'(ii) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

'(3) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

'142. When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*) and (*c*) of section 141, subsection (1), and a statement of its having been rejected, and the endorsement shall be signed by the Judge.

Endorsements on documents rejected as inadmissible.

'142 A. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 141 A, shall form part of the record of the suit.

Recording of admitted and return of rejected documents.

'(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the parties respectively producing them.'

14. In section 143, for the words and figures 'sections 62, 141 and 142' there shall be substituted the following, namely:—

Amendment of s. 143.

'section 62, section 141 A, sub-section (3), or section 142 A, sub-section (2).'

15. In section 159 the words 'or sent' shall be inserted after the word 'delivered.'

Amendment of s. 159.

16. In section 168, for the words 'shall examine the serving-officer on oath' the following shall be substituted, namely:—'shall if the certificate of the serving-officer has not been verified by affidavit, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court.'

Amendment of s. 168.

Power for Local Government to require evidence to be recorded in English.

17. The following shall be inserted after section 185, namely:—

'185 A. (1) The Local Government may, by notification in the official Gazette, direct, with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner prescribed in the foregoing sections, be taken down by him with his own hand in the English language[1].

'(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

'(3) Evidence taken down under sub-section (1) or sub-section (2) shall be in the form mentioned in section 182, and be read over and signed, and, as occasion may require, interpreted and corrected, as if it were evidence taken down under that section.

'(4) The Local Government may, by notification in the official Gazette, revoke or vary a direction notified under sub-section (1).'

Power to deal with evidence taken down by another Judge.

18. For section 191 the following shall be substituted, namely:—

'191. (1) Where the Judge taking down any evidence, or causing any memorandum to be made, under this Chapter, is prevented by death, transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it[2].

'(2) The provisions of sub-section (1) shall apply, so far as they can be made applicable, to a suit transferred under section 25[3]:

'Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh.'

Addition to s. 193.

19. To section 193 the following shall be added, namely:—

'A Court continuing a suit under section 191 may recall and re-examine a witness who has departed in accordance with section 173.'

[1] Cf. Act X of 1882, secs. 357 et *seqq.*: XVII of 1875, sec. 20: XX of 1875, secs. 11 and 12, and XVIII of 1876, sec. 19.

[2] Sections 18 and 19 were thought necessary in view of the administrative inconvenience and the trouble and expense to suitors, which would have resulted from the decisions in 7 All. 857 and 8 All. 35 and 576.

[3] 13 Suth. Civ. R. 398: 6 N.W.P. 80: 7 All. 342.

20. (1) In section 209, for the first thirteen words the words 'When a decree is for the payment of money' shall be substituted[1]. Amendment of s. 209.

(2) To the same section the following shall be added, namely:—

"Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.'

21. (1) In section 216, for the first twenty-four words the following shall be substituted, namely:— Amendment of s. 216.

'If the defendant has been allowed a set-off against the claim of the plaintiff[2].'

(1) To the same section the following shall be added, namely:—

'The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise.'

22. In section 223, for the words 'in a case cognisable by a Court of Small Causes' the following shall be substituted, namely:— Amendment of s. 223.

'in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognisance of either a Presidency or a Provincial Court of Small Causes.'

23. In section 229, after the word 'established' the words 'or continued' shall be inserted[3]. Amendment of s. 229.

24. After section 229 the following shall be inserted, namely:— Sending decrees of British Indian Courts to British Courts in Native States.

'229A. So much of the foregoing sections of this Chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.'

25. The last paragraph of section 230 is hereby repealed[4]. Repeal of part of s. 230.

[1] L. R. 2 I. A. 219: L. R. 5 I. A. 78.

[2] 7 All. 284.

[3] There are courts in Káthiawár which were established by the Governor of Bombay in Council.

[4] The paragraph referred to is spent.

Amendment of s. 244.

26. (1) In section 244, for clause (*c*) the following shall be substituted, namely:—

'(*c*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof[1].'

(2) To the same section the following shall be added, namely:—

'If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section.'

Amendment of s. 258.

27. For the last paragraph of section 258 the following shall be substituted, namely:—

'Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognised as a payment or adjustment of the decree by any Court executing the decree[2].'

Amendment of s. 266.

28. (1) In the first proviso to section 266, clause (*a*), the words 'and bedding' shall be inserted after the word 'apparel.'

(2) In the same proviso, clause (*b*), after the word 'cattle' the words 'and seed-grain' shall be inserted[3].

(3) In the same proviso for clause (*h*) the following shall be substituted, namely:—

'(*h*) the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—

'(i) the whole of the salary where the salary does not exceed twenty rupees monthly;

'(ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and

'(iii) one moiety of the salary in any other case.'

(4) To the same proviso, after clause (*l*), the following shall be added, namely:—

'(*m*) any allowance declared by any law passed under the Indian Councils Act, 1861[4], by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree;

[1] 7 Cal. 733: 8 Cal. 477: 7 All. 73.

[2] Necessitated by the conflicting rulings of the Courts reported in 9 Cal. 788: 10 Cal. 354: 5 Mad. 397: 6 Mad. 41: 8 Mad. 277: 6 Bom. 146: 10 Bom. 288: 11 Bom. 6: 3 All. 533, 538: 5 All. 269: 7 All. 124.

[3] Act XVII of 1887, sec. 70.

[4] 24 & 25 Vic., c. 67.

'(*n*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law[1] applicable to him is exempt from sale for the recovery of an arrear of such revenue.'

(5) In the Explanation to the same proviso, for the word and letter 'and (*j*)' the letters and word '(*j*) and (*m*)' shall be substituted.

29. In section 289 the words 'on the spot where the property is attached' are hereby repealed[2]. Amendment of s. 289.

30. To section 320 the following shall be added, namely :— Powers as to execution conferrible on collector.

'Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior Revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector. Appeal and revision.

'A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court[2].

'In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII of 1850 (*an Act for the protection of Judicial Officers*)[3].'

31. (1) In section 349, for the words 'is under arrest' the words 'is in custody under the foregoing provisions of this Code' shall be substituted[4]. Amendments of Chapter XX.

(2) In section 354, between the word 'and' and the words 'shall

[1] e.g. Act XVII of 1887, sec. 70.
[2] 14 Cal. 631.
[3] This section follows 5 All. 314.
[4] 11 Cal. 451 : 8 Mad. 503 : 12 Bom. 46.

operate' the words 'every order under that section appointing a Receiver' shall be inserted.

(3) For the second paragraph of section 360 the following shall be substituted, namely:—

'A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court[1].

(4) At the end of Chapter XX the following shall be inserted, namely:—

'360A. Nothing in this Chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras or Bombay.'

Procedure where one of several plaintiffs dies and right to sue does not survive to surviving plaintiffs alone.

32. (1) For sections 363 and 364 the following shall be substituted, namely[2]:—

'363. If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit.'

Procedure in case of death of sole or sole surviving plaintiff.

(2) For section 365 the following shall be substituted, namely:—

'365. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.'

(3) To section 368 the following shall be added, namely:—

'The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon[3].'

Power for Court to extend period of limitation prescribed for certain applications.

(4) After section 372 the following shall be added, namely:—

'372A. The provisions of section 5 of the Indian Limitation Act, 1877, applicable to appeals shall apply to applications under sections 365, 366, 368 and 371.'

[1] 8 Bom. 196: 7 Mad. 510.

[2] 12 Cal. 590: 9 Mad. 1: 7 All. 693: Punjab Record XXI, Civil Judgment No. 81: Rules under Judicature Acts, Order XVII.

[3] 9 Bom. 56: 7 All. 396.

33. To section 381 the following shall be added, namely:— Addition to s. 381.

'or show good cause why such time should be extended, in which case the Court may extend it [1].

'Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

'The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

'The provisions of the Indian Limitation Act, 1877 [2], with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application, shall apply, so far as they can be made applicable, to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application, respectively.'

34. In section 386, for the words 'or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint' the following shall be substituted, namely:— Amendment of s. 386.

'or to any pleader or other person whom the Court issuing the commission may, subject to any rules of the High Court in this behalf, think fit to appoint.'

35. In section 419, after the words 'Government Pleader in any Court' the words 'or such other person as the Local Government may for any Court appoint in this behalf' shall be inserted. Amendment of s. 419.

36. In section 424, after the words 'intending plaintiff' the words 'and the relief which he claims' shall be inserted. Amendment of s. 424.

37. (1) In section 432, after the words 'British India' the following shall be inserted, namely:— Amendment of s. 432.

'or at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief.'

(2) To the same section the following shall be added, namely:—

'An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the

[1] 6 Bom. 482 and Act VIII of 1859, sec. 35.

[2] Act XV of 1877, Sched. II, No. 163, supra, p. 999. Cf. Act XIV of 1882, sec. 588 (8).

purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

'A person appointed under this section may authorise or appoint persons to make and do appearances, applications and acts in any such suit or suits as if he were himself a party to the suit or suits.'

Suits against Princes, Chiefs, ambassadors and envoys.

38. For section 433 the following shall be substituted, namely :—

'433. (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court.

'(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

'(*a*) has instituted a suit in the Court against the person desiring to sue him, or

'(*b*) by himself or another trades within the local limits of the jurisdiction of the Court, or

'(*c*) is in possession of immoveable property situate within those limits and is to be sued with reference to such possession or for money charged on that property.

'(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

'(4) The Governor General in Council may, by notification in the Gazette of India, authorise a Local Government and any Secretary to that Government to exercise. with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

'(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.'

Transposition and

39. (1) Section 434 shall become section 229 B, and any reference

made before the commencement of this Act in any notification or other document to section 434 shall be read as a reference to section 229 B. Amendment of section 434.

(2) In section 229 B, the words 'or continued' shall be inserted after the word 'established.'

40. After section 433 the following section shall be inserted, namely :— Style of Princes and Chiefs as parties to suits.

'434. A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State :

'Provided that in giving the consent referred to in the last foregoing section the Governor General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name[1].'

41. To section 464 the following shall be prefixed, namely :— Princes and Chiefs and wards of Court.

'Nothing in this Chapter applies to a Sovereign Prince or ruling Chief suing or being sued in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an agent or in any other name, and.'

42. In section 503, clause (*d*), the words 'as the Court thinks fit' shall be inserted after the words 'by way of remuneration.' Amendment of s. 503.

43. In section 504, for the words 'the Court may appoint the Collector' the words 'the Court may, with the consent of the Collector, appoint him' shall be substituted. Amendment of s. 504.

44. In section 539, for the words 'having a direct interest' the words 'having an interest' shall be substituted[2]. Amendment of s. 539.

45. To section 540 the following shall be added, namely :— Addition to s. 540.

'An appeal may lie under this section from an original decree passed *ex parte*[3].'

46. To section 549 the following shall be added, namely :— Addition to s. 549.

'If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant.'

47. (1) For section 551 the following shall be substituted[4], namely :— Power to dismiss appeal without

'551. (1) The Appellate Court, if it thinks fit, may, after fixing

[1] 2 All. 690 : 7 Bom. H. C., O. C. J. 150.

[2] *Re Bedford Charity*, 2 Swanst. 518 : 8 Cal. 32 : 7 All. 178.

[3] 2 Cal. 272 : 2 Bom. 644 : 4 All. 387.

[4] Punjab Record, Civil Judgment, No. 76 of 1882.

sending notice to lower Court.

a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made and without serving notice on the respondent or his pleader.

'(2) If on the day fixed under sub-section (1) or any other day to which the hearing may be adjourned the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

'(3) The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is made.'

(2) For the first paragraph of section 552 the following shall be substituted, namely:—

'Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal.'

(3) In section 558 the words and figures 'section 551,' sub-section (2),' shall be inserted before the word and figures 'section 556.'

Amendment of, and addition to, s. 561.

48. (1) For the proviso to the first paragraph of section 561 the following shall be substituted, namely:—

'Provided he has filed the objection in the Appellate Court within one month from the date of the service on him or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow[1].'

(2) To the same section the following shall be added, namely[2]:—

'Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent.

'The provisions of Chapter XLIV shall, so far as they can be made applicable, apply to an objection under this section[3].

Amendment of s. 562.

49. (1) In section 562 the words 'so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties' are hereby repealed.

(2) In the same section, for the word 'investigate' the word 'determine' shall be substituted[4].

[1] 14 Cal. 610: 8 Bom. 559: 4 All. 248.

[2] 4 All. 430.

[3] 1 Bom. 75: 8 Mad. 214.

[4] The sections of the Code afferted by secs. 49, 50, 51 and 52 of Act VII of 1888 had been found to limit unduly the discretion of appellate courts.

50. Section 563 is hereby repealed. Repeal of s. 563.

51. In section 565, for the word 'shall' the word 'may' shall be substituted. Amendment of s. 565.

52. (1) In section 566 the words 'and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question' are hereby repealed. Amendment of s. 566.

(2) In the same section, between the words 'the Appellate Court may' and the words 'frame issues' the words 'if necessary' shall be inserted.

53. (1) In section 582, for the words 'the words "plaintiff," "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively,' the following shall be substituted, namely:— Amendment of s. 582.

'the word "plaintiff" shall be held to include a plaintiff-appellant to defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal[1].'

(2) In the same section, the words and figures 'including those of section 372 A,' shall be inserted after the words 'The provisions hereinbefore contained.'

54. To section 584 the following shall be added, namely:— Addition to s. 584.

'An appeal may lie under this section from an appellate decree passed *ex parte*[2].'

55. (1) In section 588, clause (9), for the word 'or' the word 'for' shall be substituted. Amendment of s. 588.

(2) In the same section, clause (16), for the words 'the first paragraph of' the words 'and orders under' shall be substituted.

56. The first paragraph of section 589, and the word 'other' in the second paragraph of that section, are hereby repealed. Repeal of part of s. 589.

57. Section 599, and in section 601 the words 'within thirty days from the date of the order,' are hereby repealed. Repeal of s. 599 and part of s. 601.

58. After the second paragraph of section 610 the following shall be inserted, namely:— Addition to s. 610.

'In so far as the order awards costs to the respondent, it may be executed against a surety therefor, to the extent to which he has rendered himself liable, in the same manner as it may be executed against the appellant:

'Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety[3].'

[1] 7 All. 693. [2] 2 Mad. 75. [3] 2 All. 604: 12 Cal. 402.

Addition to s. 626.

59. To section 626 the following proviso shall be added, namely:—

'and

'(c) an application made under section 624 to the Judge who delivered the judgment may, if the Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor[1].'

Power to refer to High Court questions as to jurisdiction in small causes.

60. After section 646 the following shall be inserted, namely:—

'646 A. (1) If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

'(2) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power of District Court to submit for revision proceedings had under mistake as to jurisdiction in small Causes.

'646 B. (1) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and, if required by a party, shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

'(2) On receiving the record and statement, the High Court may pass such order in the case as it thinks fit.

'(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

'(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section.'

Amendment of, and addition to, s. 648.

61. (1) For the third paragraph of section 648 the following shall be substituted:—

'and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the

[1] 10 Cal. 80: 4 All. 278.

former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.'

(2) To section 648 the following shall be added, namely :—

'Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.'

62. In section 650A, the words 'or continued' shall be inserted after the word 'established.' Amendment of s. 650A.

63. To section 652 the following shall be added, namely :— Addition to s. 652

'A High Court not established under the Statute 24 & 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*), may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure.'

64. In form No. 137 of the fourth schedule the words 'bound by the decree' shall be inserted after the words 'remove any person.' Amendment of form No. 137.

65. (1) After claus (*n*) of section 17 of the Indian Registration Act, 1877, as amended by the Indian Registration Act, 1886, the following clause shall be added, namely :— Amendments of Registration Act.

'(*o*) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.'

(2) In the second paragraph of section 50 of the same Act, for

the word and letter 'and (*n*)' the letters and word '(*n*) and (*o*)' shall be substituted.

(3) The Indian Registration Act, 1877, shall be construed as if the amendments made in it by this section had been made therein by Act XII of 1879 (*an Act to amend the Code of Civil Procedure, the Registration Act*, 1877, *and the Limitation Act*, 1877):

Provided that nothing in this sub-section shall be deemed to affect a decree or order made by any Court before the commencement of this Act[1].

[1] The remaining section (66) of Act VII of 1888 is here omitted, as the amendments of the Limitation Act which it effects have been made in their proper places, supra, pp. 1000, 1001.

ADDENDA.

VOL. I.

P. ix, l. 3, *after* Council *insert* 'in exercise of the powers delegated by the Charter Act of 1833, and the Indian Councils Act, 1861[1].'

P. xvi, note 1, *add* 'Practically speaking,' said Sir James Stephen, when presenting the report on the Bill which became the Indian Evidence Act, 'these attractive words mean little more than an imperfect understanding of imperfect collections of not very recent editions of English text-books.'

P. xxii, note 4, *add* 14 Cal. 183.

P. xxiii, note 4, l. 2, *after* 164 *insert* Livingston also used them in his draft code of evidence. See his *Works*, ii. 463, 470, 512.

P. xxv, l. 27, as to the effect of illustrations, see 7 Cal. 135, and Co. Litt. 24a: 'Exempla illustrant, non restringunt legem.'

P. xxvi, last line, *after* performance *insert* public nuisances and challenging jurors: in the Registration Act, sec. 3, where 'addition' is defined with reference to the practice of the polyandrous tribes of Malabar;

P. xxvii, l. 4, *add* For these districts, in some of which blood-feuds, border-raids and cattle-lifting still prevail, and the legislature has to recognise tribal responsibility, the decisions of elders, periodical redistribution of land, and migratory cultivation, provision is made by regulations framed by the Local Governments under 33 Vic. c. 3, and by executive notifications under Act XIV of 1874.

ll. 6, 8, 9. As to referring to statements of objects and reasons, see 8 Bom. 247, and *In re Mew*, 31 L. J. Bcy. 87. As to reports of Select Committees, see 14 Cal. 729. As to speeches in council, 5 Mad. 384.

P. 4, note 2, *add* The Indian Code of Civil Procedure, sec. 433, exempts them from arrest on civil process.

P. 5, l. 10, *after* 1879 *insert* sec. 8 expressly declares that the law relating to offences for the time being in force in British India shall extend to all native Indian subjects of Her Majesty in any place beyond the limits of British India and to all European British subjects in the dominions of Provinces and States in India in alliance with Her Majesty. The same Act

P. 7, *insert in their alphabetical order*:—

Distresses, illegal (XV of 1882, sec. 68).
Electricity (XIII of 1887, sec. 5).
Land-acquisition, mines (XVIII of 1885, sec. 12).
Native Passenger Ships (X of 1887, chap. v).
Presidency Small Cause Courts (XV of 1882, sec. 68, and cc. xi and xii).
Registration of births, deaths and marriages (VI of 1886, sec. 27).

[1] 3 & 4 Wm. IV, c. 85, and 24 & 25 Vic. c. 67. For the limitations on the legislative power of the Governor General in Council, see sec. 46 of the former statute, the proviso in sec. 22 of the latter statute, and the cases reported in L. R., 3 I. A. 102, and 3 Cal. 63.

Reserve Forces (IV of 1888 sec. 6).
Steamships, Inland (VII of 1884, sec. 6).
Tramways (XI of 1886, secs. 25, 27).
Wild birds and game (XX of 1887).

P. 8, under '(*a*) *Madras Presidency*,' insert:—
Game and Fish, Nílgiris (Mad. Act II of 1879).
Gunpowder (Mad. Act I of 1880, sec. 8).
Landing and Shipping fees (Mad. Act III of 1885, sec. 9).
Madras Harbour (Mad. Act II of 1886, secs. 76-85).
Vaccination and Inoculation (Mad. Act V of 1884, secs. 112-116).

Under '(*b*) *Bombay Presidency*,' insert:—
District Municipalities (Bom. Act II of 1884, sec. 45).
Karáchi Port-trust (Bom. Act VI of 1886, secs. 58, 70-78).
Karáchi Tramways (Bom. Act II of 1883, secs. 17-21, 24).
Khoti settlement (Bom. Act I of 1880, sec. 15).
Landing and wharfage fees (Bom. Act VII of 1882, sec. 7).
Local Boards (Bom. Act I of 1884, sec. 70).
Matádárs (Bom. Act VI of 1887, secs. 31, 32).
Pilgrims, Aden (Reg. XI of 1887).
Pilgrims' protection (Bom. Act II of 1887).

Pp. 8, 9, under '(*c*) *Lower Provinces*,' insert:—
Calcutta Survey (Ben. Act I of 1887, sec. 25).
Chittagong Port Commissioners (Ben. Act IV of 1887, sec. 30 and c. viii).
Local Self-government (Ben. Act III of 1885, secs. 140, 144).
Produce, illegal interference with (VIII of 1885, sec. 186).
Vaccination (Ben. Act II of 1887, sec. 8).

P. 9, col. 1, l. 2, *add* Ben. Act IV of 1876 amended by Ben. Act I of 1882.
l. 6, *add* V of 1887, sec. 32.

P. 9, under '(*d*) *North Western Provinces*,' insert:—
Canals and Drainage (VIII of 1873, sec. 70).
Chaukídárs (XX of 1856, secs. 45, 48, 49, 53, 55).
Courts Martial (Ben. Reg. XX of 1810).
Foreign Emigrants (Ben. Reg. XI of 1812).
Hackney carriages (XIV of 1879).
High Court (XIII of 1869, sec. 4).
Jhánsí Encumbered Estates (XVI of 1882, sec. 6).
Lending to covenanted civil servants (Ben. Reg. VII of 1823, sec. 4).
Land-revenue (XIX of 1873, secs. 100, 142).
Local Boards (XIV of 1883, sec. 51).
Minors (XL of 1858, sec. 22).
Opium (Ben. Reg. XX of 1817: Act XIII of 1857).
Passage of troops (Reg. VI of 1825).
Rent (XII of 1881, secs. 51, 87, 92, 107, 131).
State Offences (Reg. X of 1804).

Under '(*e*) *Panjáb*,' insert:
Courts (XVIII of 1884, secs. 14, 37, 60).
District Boards (XX of 1883, secs. 57, 82).
European British minors (XIII of 1874, sec. 14).
Frontier crossing (Reg. VII of 1873).
Hazára forests (Reg. II of 1879, secs. 25, 26, 28).
Land-revenue (XVII of 1887, secs. 39, 108, 149).

Under '(*f*) *Oudh*,' insert:—
Civil Courts (XIII of 1879, secs. 32–36).
European British Minors (XIII of 1874, sec. 14).
Land-revenue (XVII of 1876, secs. 64, 104).
Laws (XVIII of 1876, secs. 37 and 42).
Minors (XL of 1858, sec. 52).
Rent (XXII of 1886, sec. 107).
Under '(*g*) *Central Provinces*,' insert:—
Civil Courts (XVI of 1885, sec. 19, cl. (3), (4).
European British Minors (XIII of 1874, sec. 14).
Tenancy (IX of 1883, sec. 24).
Under '(*h*) *Bûrma*,' insert:—
European British Minors (XIII of 1874, sec. 14).
Forests, Upper Burma (Reg. VI of 1887).
Frontier crossing, Upper Burma (Reg. IX of 1887).
Land-acquisition, Upper Burma (Reg. IX of 1886, secs. 28, 29).
Laws, Upper Burma (XX of 1886).
Military police (Reg. II of 1887).
Pilots (XII of 1883, secs. 4, 5).
Rangoon Tramways (XXII of 1883, sec. 14 *et seq.*).
Registration of documents, Upper Burma (Reg. I of 1887, sec. 7).
Ruby Regulation, Upper Burma (Reg. XII of 1887).

P. 10, col. 1, l. 3, *add* sec. 37: Reg. V of 1887, sec. 21.

P. 10, under '(*i*) *Coorg*,' insert:—
European British Minors (XIII of 1874, sec. 14).
Under '(*j*) *Ajmer and Merwára*,' insert:—
European British Minors (XIII of 1874, sec. 14).
Land and revenue (Reg. II of 1877, sec. 111).
Laws (Reg. III of 1877, secs. 37, 41).
Municipalities (Reg. V of 1886, secs. 121–139, 146).
Under '(*l*) *Assam*,' insert:—
European British minors (XIII of 1874, sec. 14).
Gáro Hills (Reg. I of 1882, secs. 3, 5, 6).
Land and revenue (Reg. I of 1886, secs. 25, 58, 142, 156).

P. 17, note 2, *add* and see the Madras Hackney Carriages Act (Mad. Act III of 1879, sec. 49).

P. 18, note 3, *add* 4 Mad. 410.

P. 19, l. 37, *add note* 5, Under Act V of 1871, sec. 33, as amended by Act IX of 1882, the Governor General in Council has appointed the penal settlements of Port Blair and the Nicobar Islands, see Macpherson's *Lists*, 595.

P. 20, l. 33, *add* A definite period must be stated in the sentence. An order, for instance, directing the accused to be imprisoned until he gives security is bad (8 Cal. 644).

P. 21, l. 29, *add note* As to forfeiture of *watans* in Bombay, see Bom. Acts III of 1874 and V of 1886.

P. 23, note 1, *add* See also Ben. Reg. VII of 1823, secs. 2 and 3, and Acts XIII of 1857, sec. 9, and XIII of 1879, secs. 32–34.
note 3, *add* In Burma see Acts XVI of 1886, sec. 6, XX of 1886, sec. . and sched. iii, and XV of 1887, sec. 8.

P. 33, l. 4, *after* 'sufficient' *insert* (7 Suth. Civ. R. 299).

l. 31, *after* 'vaccination' *insert* and as to the sale and seizure of unwholesome food.

P. 56, note 1, *add* see 9 Ben. 229, per Couch, C.J.

P. 96, note 3, *insert* Conservators of Rivers, etc. (Mad. Act VI of 1884, sec. 23): Inspectors under the Glanders and Farcy Act (XX of 1879, sec. 4); Members of Local Boards, etc. (Mad. Act V of 1884, sec. 43, and Bom. Act I of 1884, sec. 71): Officers appointed under the Inland Emigration Act I of 1882, sec. 8: Registrars of births and deaths (VI of 1886, sec. 14); and see Act XVI of 1882, sec. 29; VI of 1884, sec. 42, cl. (3): Bom. Act II of 1884, sec. 46: Ben. Act IV of 1887, sec. 63.

P. 97, note 3, *add* see and consider 10 Mad. 255, where *A* dug up and dishonestly removed some cartloads of earth, part of a piece of waste land belonging to Government, and the High Court (*ratione dissentiente* Brandt J.) held that *A* was not guilty of theft.

P. 98, note 4, where the actual possession is in a ryot paying rent directly to the landowner, see 9 Ben. 229.

P. 107, note i, *add* Mad. Act VIII of 1878, sec. 13.

note l, *add* 9 Bom. A.C. Cr. 9.

Pp. 110, 111. The provisions of secs. 67, 68, 69 apply to previous offences committed and persons punished under the Madras Excise law, Mad. Act I of 1886, sec. 68.

P. 111, note 5, see 10 All. 58, 62, 67, 69.

P. 141, *after* 138 *insert the following section*:—

138 A. The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen[1].

P. 149, note 21, l. 4, *after* 31 *insert*, and see Acts XVII of 1885, sec. 12, and XVIII of 1887, sec. 18.

P. 150, note 1, *add* and see Acts XVII of 1885, sec. 12, and XVIII of 1887, sec. 18.

P. 153, note 3, *add* Acts XIV of 1883, sec. 51; XV of 1883, sec. 65; XX of 1883, sec. 62; XIII of 1884, sec. 35; XVII of 1884, sec. 37: Mad. Acts IV of 1884, sec. 260, and V of 1884, sec. 158; and Reg. V of 1886, sec. 146.

note 5, *add* and see 10 All. 65.

P. 157, note 1, *add* 12 Bom. 63.

P. 158, note 1, *add* In the second branch of the section 'an offence' means 'some particular offence,' 15 Cal. 386.

P. 159, sec. 179, see 10 Bom. 185.

note 4, *add* That no suit lies against a witness making a false statement in the course of a judicial proceeding, see 10 Mad. 87.

P. 160, note 1, *add* In 14 Cal. 314 Petheram C.J. held that the section applied to those cases in which the police are induced upon the information supplied to them to do or omit something which might affect some third person, and which they would not have done if they had known the true state of things.

P. 161, note 3, *add* and see Act VI of 1883, sec. 1.

P. 162, sec. 188, l. 1, The 'order' must be actually in force, 10 All. 115.

note 3, l. 4, *after* 144 *insert*, or the Telegraph Act XIII of 1885, sec. 16.

P. 164, sec. 191, see Act V of 1884, sec. 2.

[1] Act XIV of 1887, sec. 79.

P. 166, note 2, l. 9, *add* see also 11 Bom. 702: 14 Cal. 653.

note 5, Acts XI of 1841 and XII of 1842 are now repealed by Act VIII of 1887.

P. 169, note 3, *add* And see 14 Cal. 653.

P. 170, notes, col. 1, l. 4, *after* 749 *insert* 8 All. 252.

P. 173, note 8, *add* and see 5 All. 598: 14 Cal. 633.

P. 174, note 3, l. 5, *after* compounded *insert* (Crim. Proc. Code, sec. 346).

P. 193, note 1, *add* As to weights and measures in the Presidency Towns see Ben. Act IV of 1886, secs. 55, 56: Mad. Act IV of 1884, sec. 205: Bom. Act IV of 1882.

P. 194, note 5, *add* A Muhammadan who sacrifices a cow before sunrise in his own compound is not guilty of a public nuisance, though the compound is visible from a public road, 10 All. 44.

P. 195, note 4, *add* The Madras Excise Act (Mad. Act I of 1886), sec. 57, cl. *a*, provides for cases in which the admixture does not amount to adulteration.

note 6, *add* see Bengal Act III of 1886.

P. 200, note 2, l. 8, *after* 244 *insert* and see 10 All. 46.

P. 202, sec. 295, see 10 Mad. 126, where a Hindú had sexual intercourse at 9 P.M. within an enclosure surrounding the tomb of a Muhammadan faqír. The 'object' mentioned in l. 2 is an inanimate object, 10 All. 150.

P. 207, note 2, l. 3, *after* wife *insert* and see 8 All. 622 and 635.

P. 211, sec. 304 A, see for an illustration 14 Cal. 566, where a quack (*kabirdj*), untaught in matters of surgery, operated for internal piles by cutting them out with a common knife, and the patient died from hæmorrhage.

P. 235, note 3, *add* 10 Mad. 255, 259.

note 5, as to fish see also 10 Bom. 194: 15 Cal. 388 and 402. A bull dedicated to an idol, and then set free, is not *res nullius*, but *prima facie* belongs to the trustee of the temple where the idol is worshipped, 11 Mad. 145. Otherwise, apparently, where the bull is, on the death of a relative of its owner, let loose as part of the funeral ceremony, 9 All. 348, following 8 All. 51.

note 8, *add* 10 Mad. 186.

P. 238, sec. 379, see 10 Bom. 193.

P. 248, note 1, *add* and see 9 All. 670.

P. 250, sec. 410, last clause, see 9 All. 348, following 8 All. 51.

P. 256, note 3, *add* see also 12 Cal. 660, where the Court held, in accordance with ill. (*d*), that the damage contemplated in sec. 425 need not consist in the infringement of an existing present and complete right, but might be caused by an act done now with intent to defeat a right about to come into existence.

P. 258, note 4, *add* And now see Act V of 1888, sec. 4, cl. (6).

P. 259, note 5, *add* The imposition of a fine under the Panjáb Land Revenue Act, XVII of 1887, sec. 108, for destroying etc. survey-marks does not bar a prosecution under sec. 434 of the Code.

P. 261, note 10, *add* Illegal interference with the produce of a holding is made 'criminal trespass' by the Bengal Tenancy Act, VIII of 1885, sec. 186.

P. 268, sec. 463, see 12 Bom. 36.

note 11, *add* As to intention in fabricating a false document see 13 Cal. 349 and 14 Cal. 513, following *Reg.* v. *Hillman*, 1 Leigh & Cave, C. C. 243.

P. 272, sec. 467, see 12 Bom. 36.

P. 276, note 4, *add* see the Madras Excise Act (Mad. Act I of 1886), sec. 57, cl. (*c*).

P. 277, sec. 486, see the same Act, sec. 57, clause (*d*).

P. 281, note 2, *add* But see 10 Mad. 218.

P. 285, note 2, *add* There is no exception in favour of a second or third publication as compared with a first, 12 Bom. 167.

P. 286, As to Expl. 4, see 9 All. 420.

P. 290, note 3, *add* See 11 Bom. 376.

sec. 504. l. 3, 'will cause him,' i.e. under ordinary circumstances, 10 Mad. 353, where *A*'s abusive language had reduced *B* to such a state of abject terror that the provocation was unlikely to cause *B* to break the public peace.

P. 293, sec. 511, ill. (*b*): see 11 Bom. 376.

note 5, *add* No criminal liability can be incurred under the Code by an attempt to do an act which, if done, would not be an offence under the Code, 11 Bom. 381.

P. 295, note 2, *add* As to their domestic tribunal, see 11 Bom. 185.

note 5, *add* see 10 Mad. 69.

P. 301, l. 13, *add* For tenants in the Panjáb having rights of occupancy in land rules are provided by Act XVI of 1887, sec. 59.

P. 309, last line, *add* As to Muhammadan donations *mortis causa* see 9 All. 357.

P. 311, note 2, *add* and see 10 Mad. 251.

note 3, for rules as to expounding Hindú wills, see 11 Bom. 69.

P. 319, l. 2. As to secs. 16 and 50 of the Probate and Administration Act, see 12 Bom. 164.

l. 33. As to secs. 37 and 45 of the same Act, see 12 Cal. 375.

P. 339, note 6, *add* It renders a married woman domiciled in England able to sue without her husband in India, 15 Cal. 39.

P. 343, sec. 19. Whoever seeks to have the succession regulated by some other law is, therefore, under the burden of proving another domicile.

P. 364, note 1, *add* The presumption is that they were made after the execution of the will, *Simmons* v. *Rudall*, 1 Sim. N. S. 136.

P. 367, note 1, *add* That a Hindú child born in wedlock is legitimate, though begotten before marriage, see L. R., 1 I. A. 282, 293.

P. 374, note 3, *add* See 11 Bom. 573, 578, following 5 Cal. 684, and consider whether sec. 82 does not abrogate the rule that in the absence of express words showing such an intention, a Hindú's devise to his wife does not confer an estate of inheritance, but carries only a widow's estate as understood by Hindú law.

P. 390, note 5, *add* 1 Cal. 303.

P. 406, note 2, *add* The section leaves no room for presumption. The Court cannot decide whether the legacy is given to *A* as executor or not, 15 Cal. 83.

P. 426, note 1, *add* And sec. 164 is at variance with Muhammadan law, see 7 Ben. P. C. 643.

P. 439, note 1, *add* No provision seems made for the case of a will lost or mislaid in the testator's lifetime, a copy or draft being still in existence.

note 3, l. 2, *after* See *insert* 8 Cal. 864 and

P. 449, note 3, *add* On the application for probate the Court should not go into questions of title to property or validity of bequests, 4 Cal. 1 : 12 Bom. 166.

P. 456, note 1, *add* As to the damages recoverable on the bond, see 10 All. 29.

P. 486, l. 3, *after* 1868 *insert* is not a Code, but is here printed because it is necessary for the right understanding of the Codes which follow in this work. It

l. 33, *after* X of 1886 *insert* (repealed and replaced by Bom. Act III of 1886).

l. 35, *add* A similar effect will doubtless be produced by the N. W. Provinces Act I of 1888, which combines the Indian Acts I of 1868 and I of 1887.

P. 487, note 3, *add* As to standing timber, see 10 All. 160 and cases there cited.

P. 488, l. 1, as to 'moveable property,' see 10 All. 2.

P. 490, note 2, l. 5, *after* disposal *insert* 13 Cal. 86 : 15 Cal. 107.

l. 10, *after* 679 *insert* whether ministerial or judicial, 15 Cal. 357, *and add to the note* 2 Bom. 148 : 3 Bom. 214 : 8 Bom. 294.

P. 495, note 1, *add* in the case of members of a Hindú family, 11 Bom. 608.

P. 497, l. 8, *add* contracts made by or on behalf of municipalities, local boards and port-trustees by various local enactments, such as XV of 1873, sec. 33; XV of 1883, sec. 40; XVII of 1884, sec. 36 : Mad. Act IV of 1884, sec. 45 : Bom. Act I of 1884, sec. 35 : Ben. Act IV of 1887, sec. 65 : Regs. V of 1886, sec. 40, and V of 1887, sec. 17.

P. 498. l. 23, *after* transfer *insert* but subject, of course, to his right to call upon the claimants to interplead.

note 1, *add* and see 9 All. 228.

P. 499. l. 13, Debenture-bonds issued by municipalities etc. are generally made transferable by endorsement, which is sometimes required to be registered in the office of the body issuing the bonds. See e. g. Mad. Acts I of 1884, sec. 209, and II of 1886, sec. 36 : Bom. Act I of 1881 : Ben. Act IV of 1887, sec. 72.

P. 501, l. 11. A seventh mode is by legislative cancellation : see, for example, the Inland Emigration Act, I of 1882, secs. 111, 140, 177.

P. 501, note 1, for Indian cases on the subject see L. R., 7 I. A. 107 (lessor's covenant) : 12 I. A 1 (mortgage-deed) : 2 Agra 150 (grant) : 9 All. 162 (bond) : 2 Mad. H. C. 177 (power of attorney) : 12 Bom. 17 (conditions of sale).

P. 502, l. 10, *add* but subject to the provisions of the Evidence Act (I of 1872), sec. 92, prov. 4.

P. 505, note 1, *add* As to the construction of stipulations as to time, see *Tilley* v. *Thomas*, L. R., 3 Ch. App. 61.

P. 508, note 3, l. 3, *after* 487 *insert* As to merger of securities, see 10 Mad. 163.

P. 511, note 1, *add* As to sales of liquor and intoxicating drugs, see Mad. Act I of 1886, secs. 15, 16.

P. 513, l. 15. As to Hindú marriages, see 11 Bom. 252. As to contracts of betrothal, 11 Bom. 412.

P. 516. l. 14, *after* case *insert* The English rules as to solicitors apply generally to pleaders (12 Bom. 85, per West J).

note 3, after 3 Mad. 140 *insert* 9 Mad. 140 : 10 Mad. 33.

P. 517, l. 12, *after* service *insert* except in cases provided for by the Inland Emigration Act, I of 1882, sec. 11.

note 5. The Bill here referred to is now Act VI of 1887.

note 7, *add* Ben. Act V of 1883 provides for the registration and control of porters and dándiwálas at Darjíling and Kurseong.

P. 519, l. 3, *add* And as to labourers in Assam and the districts of Chittagong etc., see Act I of 1882.

P. 524, l. 17, As to marine insurance see also the Sea Passengers Act, XII of 1885, sec. 7.

P. 529, l. 11, *after* no *insert* general.

l. 12, *add* But see Ben. Act IV of 1866, secs. 53, 54, which require pawnbrokers in Calcutta to give information as to stolen property, and not to take pledges from children.

note 2, *add* As to pawning military decorations, see 10 Mad. 108.

note 5, *add* As to a shipowner's lien for freight, see Mad. Act II of 1886, sec. 52 *et seq.*: Bom. Act VI of 1886, sec. 47; and Ben. Act IV of 1887, sec. 35.

P. 530, l. 11, *add* But see 14 Cal. 809. Other statutory liens are conferred by Ben. Reg. VI of 1823, sec. 2 (advances to indigo-cultivators) and the enactments relating to harbour-rates (Mad. Act II of 1886, sec. 48; Bom. Act VI of 1886, sec. 46: Ben. Act IV of 1887, sec. 34).

l. 14, *after* Courts *insert* (10 Ben. 444: 14 Cal. 374).

P. 532, l. 33, *after* mouth *insert* But the adjustment must be assented to by both parties (6 Cal. 451).

P. 546, note 1, l. 11, *after* 83 *insert* 14 Cal. 781.

l. 21, *add* or a custom of a caste to expel a member in his absence without notice given or opportunity of explanation offered, 10 Mad. 133.

P. 549, sec. 4, ll. 4, 5, Though a letter of acceptance is posted to the proposer it is not 'put in course of transmission to him' if it is not correctly addressed, 9 All. 366, 385.

P. 553, note 1, *add* A guardian cannot contract on behalf of his infant ward so as to bind him personally, 11 Bom. 551, per Lord Hobhouse. But see an exception in the Emigration Act, XXI of 1883, sec. 40.

Pp. 554, 555, secs. 16, 17, see 11 Bom. 666.

P. 558, sec. 21, see 11 Bom. 174.

P. 559, note 2, l. 30, *insert* nor to a mortgage subsequent to a temporary injunction, 9 All. 497.

note 3, *add* So is an agreement for which the consideration is abstention from taking criminal proceedings, 11 Bom. 566, following *Williams* v. *Bayley*, L. R., 1 H. L. 200, 220.

P. 562, note 7, *add* nor a conditional promise to pay when the promisor is able, 11 Bom. 580.

note 8, *add* It must not be a promise to pay by instalments or in (e. g.) two years, or out of a particular fund, *Chasemore* v. *Turner*, L. R., 10 Q. B. 505, per Coleridge C.J., citing Williams J. in *Buckmaster* v. *Russell*, 10 C. B. N. S. at pp. 749–740.

P. 573, note 3, l. 2, *after* 633 *insert* The obligation enforced by them arises from a *quasi*-contract, see 1 Mad. H. C. 411: 5 Mad. H. C. 200.

P. 574, sec. 45, see 9 All. 486.

P. 577, sec. 53, see 11 Bom. 412.

Pp. 581, 582, secs. 62, 63, see 15 Cal. 319, 326, where the High Court said that the provisions of sec. 62 do not apply after there has been a breach

of the original contract, and that sec. 63 is in direct antagonism to the law of England.

P. 583, sec. 65, see 9 All. 340, where Edge C.J. said that the section includes any person whatever who has obtained any advantage under a void agreement.

P. 588, As to the damages recoverable by the lender for breach of an agreement to lend money, see 12 Bom. 242.

P. 592, sec. 74, see 9 All. 690: as to the exception, 10 All. 29.

note 2, l. 6, *add* But see 10 Cal. 305, and 14 Cal. 248, where the Court thought the cases in 9 Cal. 615 and 689 were overruled.

note 2, l. 15, *add* See also 10 Mad. 203, dissenting from 8 All. 185 and following 4 Cal. 137.

P. 595, l. 4, 'part of the goods,' see 15 Cal. 1.

P. 605, note 2, *add* see 11 Bom. 704.

P. 622, note 1, *add* As to want of care, see 9 All. 398.

P. 651, note 4, l. 6, *after* divided *insert* (a case overlooked by the Act).

P. 695, sec. 67, see 1 Cal. 130.

P. 700, sec. 85 is founded on 16 & 17 Vic. c. 59, sec. 19 (as to which see L. R., 9 C. P. 513: 1 C. P. D. 578: 2 C. P. D. 151); compare also 45 & 46 Vic. c. 61, sec. 60.

P. 726, last line, *after* income *insert* No mention is here made of title-deeds, as to which see 11 Bom. 485.

P. 738, l. 4, *add* Special rules as to gifts by the Oudh tálluqdárs and grantees are contained in Act I of 1869, secs. 16, 17, 18.

l. 9, *after* declares *insert* (sec. 135).

l. 12, *after* payment *insert* The principle embodied in this section is fully stated in Story's *Equity Jurisprudence*, 1886, §§ 1048–1057.

P. 746, note 5, see 15 Cal. 362.

note 6, *add* 14 Cal. 451 and 599.

P. 748, sec. 6, cl. (*d*): 'property' here includes an actionable claim, 14 Cal. 241.

note 3, *add* Mad. Act VIII of 1878, sec. 4 (coffee): Bom. Acts IV of 1881, sec. 7 (salary of village-officers), and V of 1886 (*watans*): Reg. II of 1877, sec. 36 (*bhúm*).

P. 751, sec. 10, As to the proviso, see 11 Bom. 354: 13 Ben. 383: 12 Cal. 512. It limits the Married Women's Property Act, III of 1874, sec. 8.

P. 766, note 5, Recent cases on *lis pendens* are in 15 Cal. 94 and 9 Mad. 92.

P. 767, note 4, *add* in the parts of British India to which it applies. As to 13 Eliz. c. 5 in Bombay, see 11 Bom. 666, at p. 675.

P. 774, sec. 68, cl. (*b*), l. 6, 'sold,' i.e. otherwise than through the intervention of a court, 10 Mad. 515.

note 1, l. 5, *after* 11 *insert* 10 All. 133 and cases there cited.

note 2, *add* See too 11 Bom. 462.

note 3, *add* But as to the former case see 10 Mad. 514 and 6 Bom. 719.

P. 780, sec. 67. See 10 Mad. 130.

note 4, *add* A Court of Small Causes is not such a Court, Acts XV of 1882, sec. 19, cl. (*f*) and IX of 1887, sec. 15, and sched. II, cl. (6).

P. 781, note 3, *add* 11 Mad. 88.

note 7, *add* For an instance of a 'default' under this clause, see 10 All. 47.

P. 782, note 3, l. 7, *after* 252 *insert* and see 14 Cal. 479–480.

P. 791, sec. 85, l. 5, 'notice.' As to presuming this, see 9 All. 125, at p. 129.
note 2, *add* In 11 Bom. 428 the reason for the rule is said to be, that otherwise the possessor might be exposed to many suits on the same cause of action.
P. 792, sec. 87, para. 2, see 9 All. 504.
P. 793, ll. 6–14, see 11 Mad. 90; and compare 44 & 45 Vic. c. 41, sec. 25.
P. 796, sec. 94. That costs distinctly and separately awarded on foreclosure are not part of the mortgage-money, see 10 All. 179.
P. 797, sec. 99, see 10 Mad. 129.
P. 798, l. 1, 'made security,' i.e. immediately on execution, 14 Cal. 687.
P. 802, note 6, *add* Mad. Act II of 1884, sec. 7, expressly empowers a tenant, who has been compelled to pay the expense of constructing or repairing boundary-marks, to deduct the amount from his rent.
P. 804, clause (*o*), see 10 Mad. 351.
P. 810, note 5, l. 5, *after* 855 *insert* 14 Cal. 446.
P. 812, note 3, l. 6, *after* 285 *insert* in Madras, 10 Mad. 196: in Bombay, 11 Bom. 517.
sec. 129, l. 4: sec. 123 abrogates the rule of Hindú law that delivery of possession is essential to complete a gift of immoveable property, 14 Cal. 450.
P. 813, sec. 131, l. 1, 'transfer,' whether in writing or by word of mouth, 9 All. 251. [1] In case of transfer by sale they are provided for by sec. 55 (3).
sec. 131, l. 7, see 10 Mad. 289.
note 5, l. 1, *after* 506 *insert* 10 All. 20, 26.
P. 814, note 4, *add* followed in 10 Mad. 289. But see 9 All. 476.
note 5, l. 1, *after* 9 *insert* 11 Mad. 56, 61.
P. 821, l. 27, *after* another *insert* in his own name.
P. 822, l. 11, *after* 11 *insert* the Official Trustee Act, XVII of 1864.
P. 838, note 1, *add* The proper way to make provision for the maintenance of an animal during its life is to give an annuity to a person to cease at the animal's death.
P. 839, note 3, *add* and 11 Bom. 441.
P. 850, note 2, l. 2, *after* which *insert* illustration.
P. 888, note 1, *add* As to the control of public streams etc. in the Lower Provinces, see Ben. Act III of 1885, sec. 89: in Madras, Mad. Act VI of 1884.
P. 898, ll. 17–20: see 11 Mad. 19.
P. 901, l. 21, see 14 Cal. 797 (light and air).
P. 906, sec. 17, cl. (*c*), see 11 Mad. 22.
P. 907, note 4, l. 7, *after* 253 *insert* 10 All. 162.
P. 928, l. 3, *before* remedies *insert* judicial [1].
P. 933, l. 26. The words 'in writing' are repealed wherever the Transfer of Property Act is in force.
note 1, l. 2, *after* J. *insert* and see 1 All. 82: 2 Bom. 133 at p. 138.
P. 934, l. 32. For the present English rule as to declaratory decrees, see Order XXV, r. 5.
l. 37, As to suits in England to perpetuate testimony, see Order XXXVII, rr. 35 38.
P. 945, note 2. The whole Act has been extended to the Chief Commissionerships of Sind and Coorg: to West Jalpaigori, Hazáríbágh, Lohárdaga and

[1] Extra-judicial remedies recognised by Indian law are distress and arbitration.

Mánbhum, and to the pargana Dálbhum in Singbhúm; to the Jhánsí Division; to the Scheduled Districts of the Panjáb, and to those of the Central Provinces; and in Assam to the districts of Kamrup, Naugong, Durrung, Síbságur, Lakhimpur, Goálpará (excluding the Eastern Dváras), Silhat and Káchár (excluding the North Káchár Hills).

P. 949, sec. 9, l. 2. That 'immoveable property' here includes common of fishery and right of way, see 12 Bom. 221, dissenting from 17 Suth. Civ. R. 70, col. 2.

note 1, l. 16, *after* 446 *insert* Mere discontinuance of payment of rent by a tenant is not a 'dispossession,' 14 Cal. 649.

note 1, *add.* But no suit for possession of immoveable property lies in a Court of Small Causes, Acts XV of 1882, sec. 19, cl. (*d*), and IX of 1887, sec. 15 and sched. II, cl. (4). In the Panjáb a tenant dispossessed of his tenancy, or of any land comprised therein, cannot avail himself of sec. 9; see Act XVI of 1887, sec. 51.

P. 952, sec. 12, l. 3. 'Court': this does not include a Court of Small Causes, see Acts XV of 1882, sec. 19, cl. (*h*) and IX of 1887, sec. 15, sched. II, cl. (15).

P. 959, l. 13, see 9 All. 168: 11 Bom. 199.

P. 964, note 6, *add* When the plaintiff insisted on having that to which he had no right, and on that account delayed performing his part of the agreement for payment of the purchase-money, specific performance was refused, 9 All. 705, 711.

P. 967, sec. 25, cl. (*b*), see 14 Cal. 518 and 11 Bom. 280.

P. 973, sec. 31, l. 6, see 14 Cal. 308.

note 4, *add* Such suits are excluded from the cognizance of Courts of Small Causes, Acts XV of 1884, sec. 19, cl. (*j*) and IX of 1887, sec. 15, cl. (16).

P. 974, sec. 34, see in England, Tayl. *Ev.*, 8th ed. § 1140, and *Druiff* v. *Parker*, L. R. 5 Eq. 131.

sec. 35, l. 1. The words 'in writing' are repealed wherever the Transfer of Property Act is in force.

sec. 35, l. 3. 'Court' here does not include Court of Small Causes, Acts XV of 1882, sec. 19, cl. (*h*) and IX of 1887, sec. 15, cl. (15).

sec. 35, note 2, *add* See the Evidence Act, sec. 92, ill. (*e*).

P. 976, l. 1. The words 'in writing' are repealed wherever the Transfer of Property Act is in force.

sec. 39, para. 1. See 9 All. 439, 440; and as to the court-fee, 5 All. 331; 'the Court' does not include a Court of Small Causes, Acts IX of 1882, sec. 19, cl. (*j*) and IX of 1887, sec. 15, cl. (16).

P. 978, chap. VI. Persons deeming themselves aggrieved by entries in a record of rights or an annual record may, in the Panjáb, sue under this chapter, Act XVII of 1887, sec. 45.

sec. 42, proviso, 'further relief,' see 14 Cal. 586: i. e. as against the defendant in the suit, not as against third parties who may possibly support some of his contentions, 11 Mad. 116, at p. 182.

P. 979, ill. (*e*), see 10 Mad. 90, dissenting from 8 Cal. 12.

note 1, l. 5, *after* right *insert* But this was not the intention of the legislature; and see 10 Mad. 90.

note 3, *add* As to improper exercise of this discretion, see 8 All. 365: 9 All. 622.

P. 980, sec. 45, see 11 Bom. 691.

P. 982, sec. 51. For rules framed by the Bombay High Court, see *Bombay Government Gazette*, 11 Oct. 1887, part I, p. 902.

note 2, *add* None will issue to compel a magistrate to commit where he has not declined jurisdiction, but merely erred in law, 2 Cal. 278.

P. 983, sec. 54, see 14 Cal. 199. As to injunctions in cases between co-sharers, 14 Cal. 236 and 15 Cal. 220.

note 2, *add* Courts of Small Causes cannot grant injunctions, Acts XV of 1882, sec. 19, cl. (*i*), and IX of 1887, sec. 15, and sched. II, cl. (17).

P. 987, sec. 55, ill. (*b*). So if one co-owner of land erect a building thereon without the permission of the other co-owners, they may obtain its demolition if it has caused such substantial injury as could not be remedied in a suit for partition of the land, 9 All. 661.

note 7, l. 4, *after* injury *insert* (14 Cal. 236).

P. 989, note 5, l. 7, *after* 611 *insert* and see 9 All. 239 (estoppel by acquiescence).

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P. 14, l. 36, *after* (196) *insert* for keeping lotteries (ibid.).

l. 39, *add* and for giving false evidence in statements made under promise of pardon, (sec. 339).

P. 15, l. 18, *insert* Act XIV of 1887, sec. 40 (Indian Marine).

l. 30, *insert* VI of 1885, sec. 4 (Amending Excise Act).

l. 40, *insert* Reg. V of 1873, sec. 10 (Bengal Eastern Frontier).
Reg. I of 1876 (Gáro Hills).

P. 59, note 2, l. 3, *after* Appendix A *insert* In Upper Burma, exclusive of the Shan States, the Code is in force with certain modifications, for which see Regs. VII of 1886 and XIV of 1887. So on the Panjáb Frontier, see Reg. IV of 1887.

P. 61, sec. 4, cl. (*a*), see 10 All. 39 (charge of defamation not made in complaint, but added in subsequent examination).

P. 74, sec. 35, l. 6, see 10 All. 58.

P. 81, note 1, *add* and the Indian Marine Act, XIV of 1887, sec. 78.

P. 92, sec. 94, l. 9. As to inspection of documents so produced, see 15 Cal. 109.

Pp. 98, 100, 101, secs. 107, 112, 117, see 9 All. 452.

P. 112, sec. 145, see 15 Cal. 31.

P. 113, sec. 147, l. 2, 'likely,' see 11 Bom. 584.

note 6, *add* That an order under sec. 145 may in exercise of revisional jurisdiction be altered into one under sec. 146, see 14 Cal. 361.

P. 116, note 5, *add* sec. 155 deals only with the powers of police-officers, 12 Bom. 161.

P. 118, sec. 161, see 11 Bom. 659.

P. 121, l. 9, 'a term not exceeding fifteen days,' including one or more remands, 11 Mad. 98.

P. 127, note 6, *add* and 9 All. 523.

P. 131, note 2, *add* 14 Cal. 707.

P. 133, sec. 195. That sanctioning a prosecution is a judicial act, see 10 Mad. 232: but see 11 Bom. 659.

note 6, *add* but not a sub-registrar acting under sec. 34 of the same Act, 11

Mad. 3: see 12 Bom. 36. As to 'subordinate' Courts, see 2 Bom. 481, followed in 11 Bom. 440.

P. 135, sec. 198, l. 4, 'complaint,' see 10 All. 39.

P. 137, sec. 203, see 9 All. 85 and 666.

P. 146, note 1, *add* In 9 All. 525 the High Court dissented from 8 Bom. 200, and added a charge.

P. 147, note 4, *add* see 14 Cal. 395.

P. 148, sec. 235, clause III, see 10 All. 62, where Mahmúd J. said that the clause iii. distinctly contemplated the trial of the accused for separate offences, where the acts complained of, when combined, would constitute a different offence.

P. 154, notes, col. 2, l. 7, after 94 *insert* and it extends to all summons cases, whether tried summarily or not, 11 Mad. 142.

P. 158, note 1, *add* That summary jurisdiction under sec. 260 is not necessarily ousted by the complaint charging offences not summarily triable, see 10 All. 55.

P. 172, sec. 307, cl. 3, see 15 Cal. 269.

P. 183, sec. 342, para. 1, see 10 Mad. 295.

P. 193, l. 1, 'examined,' see 10 Mad. 295, per Kernan J.

P. 207, note 2, *add* So where the High Court dismisses a munsif for corruption, 13 Moo. I. A. 343.

P. 213, note 1, *add* 9 All. 528.

P. 215, sec. 435, see 14 Cal. 887.

P. 224, secs. 454, 457, see 10 All. 146.

note 1, *add* That an E. B. subject declared a vagrant, or convicted under sec. 22 or 23 of the European Vagrancy Act, is subject, in the mufassal, to all the provisions applicable to Europeans not being British subjects, except those relating to security for good behaviour, see Act IX of 1874, sec. 30.

P. 232, sec. 480, see 12 Bom. 63.

P. 241, sec. 497, *add in margin* When bail may be taken in case of non-bailable offences.

P. 248, sec. 517, see 14 Cal. 834: 10 Bom. 197.

P. 256, sec. 537, see 9 All. 666.

P. 257, note 2, l. 1, *after* 128 *add* and 358.

P. 258, note 3, see also Bom. Act IV of 1883.

P. 262, sec. 554, see 15 Cal. 122.

note 2, *add* See Acts XIII of 1884, sec. 157: XVII of 1884, sec. 146: and Ben. Act III of 1885, sec. 141.

P. 263, note 2, l. 2, *after* 141 *insert* and see Bom. Act II of 1881.

P. 372, l. 19, *after* Deoli *insert* Baroda (*Gazette of India*, 24 March, 1888, p. 137).

P. 380, note 1. The Protection of Pilgrims Act (Bom. Act II of 1887), sec. 16, enacts that the penalties to which masters and owners of vessels are made liable thereby shall be enforced 'only by information laid at the instance of the Commissioners.' The draftsman probably meant 'only by complaint made with the sanction of the Commissioners.'

P. 392, l. 1, *after* 273 *insert* and many of the local Courts Acts contain provisions on this subject.

note 1, *add* and 4 Mad. 410.

P. 410, l. 22, As to rights of preemption in English manors and German villages, see Elton, *Origins of English History*, p. 404, note 1.

P. 466, note 3, *add* The High Court N.W. Provinces has held that an advocate may take instructions directly from a suitor, 9 All. 617.

P. 471, note 2, *add* also by Act VII of 1888.

P. 477, note 5, *add* As to the relative rank of a Small Cause Court and the court of a cantonment magistrate, see 12 Bom. 169, following 22 Suth. Civ. R. 457, col. 2.

P. 478, note 4, l. 16, see now Act VII of 1888, sec. 7.

P. 482, sec. 25. In the Panjáb see Act XVIII of 1884, sec. 34.

note 6. That 'suit' here does not include execution-proceedings, see 15 Cal. 177, dissenting from 5 Bom. 680 and 1 All. 180.

P. 484, sec. 28, l. 11, '*persons*.' This includes a vessel, 12 Bom. 237.

P. 485, sec. 31, see 14 Cal. 435.

note 3, *add* As to Hindú managers, see 12 Bom. 158.

P. 486, note 2, *add* questions between plaintiff and defendant, not questions which may arise between co-defendants or co-plaintiffs *inter se*.

note 7, *add* 14 Cal. 400.

P. 490, sec. 43, para. 1, see 10 Mad. 347 : 11 Mad. 127.

para. 2, see 11 Mad. 151.

P. 491, sec. 44, *Rule a*, see 10 Mad. 506.

P. 493, sec. 50, In suits under the Oudh Rent Act, see Act XXII of 1886, sec. 137.

P. 496, sec. 53 and note 2 : see now Act VII of 1888, sec. 9.

P. 511, sec. 111, see 12 Bom. 31.

P. 533, sec. 174, para. 1, see 12 Bom. 63.

P. 541, note 7, l. 4, *add* 10 All. 51.

P. 547, sec. 223, l. 5, Here 'Court' does not include a foreign Court, 12 Bom. 230.

P. 550, note 7, *add* see also 11 Mad. 132.

P. 551, sec. 232, see 11 Bom. 368 and 727.

P. 552, sec. 234, see 11 Bom. 727.

P. 556, sec. 244, cl. (*c*), see 12 Bom. 30 and 80.

note 13, l. 4, *after* 363 *insert* or persons attaching decrees, 15 Cal. 371.

P. 557, note 1, l. 2, *after* 411 *insert* 15 Cal. 187.

P. 561, sec. 253, see 12 Bom. 71.

P. 563, sec. 258, para. 3, see 12 Bom. 235.

note 7, *add* and 11 Bom. 724.

P. 568, ll. 1–3, see 15 Cal. 329 (property held by judgment-debtor on specific trust).

P. 575, note 4, l. 3, *after* 118 *insert* 15 Cal. 202, at p. 210.

P. 576, sec. 280. This section contemplates not only the entire release of the property from attachment, but also the retention of the attachment to such extent as the Court thinks fit, 12 Bom. 231, see p. 235.

P. 576, note 5, l. 2. *For* A suit under section 283 does not *read* Jurisdiction to try suits under sec. 283 is fixed with reference to the amount in dispute, not the value of the property, 15 Cal. 104, following 2 All. 698 and 799 : 4 Mad. 339 : 4 Bom. 515. But in no case does a suit under sec. 283

P. 585, sec. 304, see Act XVI of 1887, sec. 55.

P. 587, note 7, *add* Of course there can be no confirmation of a sale in execution of a decree which is reversed, 10 All. 83.

P. 605, sec. 344. When a judgment-debtor applied under this section his surety was released from his obligation under the bond, 15 Cal. 171.

P. 606, sec. 347, cl. 1. As to the necessity of the notice, see 11 Mad. 136.

P. 608, sec. 352, l. 3. See 11 Mad. 1, where 'then' is said to mean 'after,' but not necessarily 'immediately after.' See also 10 All. 194.

P. 610, note 1, *add* As to clause (*d*), see also 12 Bom. 272.

P. 617, note 7, *add* The section does not apply to assignments made subsequently to the suit, 10 All. 97.

P. 651, sec. 484, see 12 Bom. 71, as to the liability of sureties under this section.

P. 654, sec. 492, cl. (*a*), 'wrongfully sold in execution,' see 10 All. 80.

P. 660, sec. 508: P. 662, sec. 514: P. 664, sec. 521: see 10 All. 137.

P. 665, note 1, l. 14, *after* 415 *insert* There may be an appeal from a decree purporting to be made in terms of an award, where there has been no award in fact or in law, 11 Mad. 85.

P. 671, note 3, l. 7, *after* 36 *insert* So is a trust for an idol and temple, 12 Bom. 247.

P. 691, sec. 591, see 9 All. 447.

P. 698, note 1, *add* 8 All. 650.

P. 700, sec. 617, see 12 Bom. 78.

P. 701, note 6, *add* see 11 Mad. 144.

P. 702, note 1, *add* followed in 10 All. 122.

P. 705, note 4, *add* And there is no appeal from an order granting a review of judgment, except in the cases set forth in this section, 12 Bom. 171.

P. 711, notes, col. 2, l. 6, *after* 295 *insert*, Sec. 647 makes secs. 373 and 374 applicable to proceedings in execution, 10 All. 71, following 7 All. 359 and 6 Bom. 681, but dissenting from 10 Bom. 62 and 6 Mad. 250.

P. 819, note 2, *add* West J.'s words are 'chiefly taken from Taylor on Evidence.'

P. 832, l. 13, *add* As to the privilege of a witness uttering slander whilst under examination, see 15 Cal. 264.

P. 839. The remarks here made as to provincial pleaders were true as regards Madras in 1872. But I have been informed that since then, in the Madras mufassal, and probably elsewhere in British India, these pleaders have much improved.

P. 841, note 1, *add* But see ibid. 542, 543, per Straight J.

P. 851, note 1, l. 3, *after* 40 *insert* 14 Cal. 180; and see as to the definition 12 Bom. 36, 42.

P. 854, note 3, l. 2, *after* '(*a*)' *insert* and in sec. 111.

P. 861, note 6, l. 15, *add* and see 15 Cal. 233: 11 Mad. 123.

P. 874, cl. (2), see 11 Bom. 690.

P. 878, sec. 35, see 11 Mad. 123.

sec. 36, as to survey-maps see 15 Cal. 353.

P. 892, note 5, *add* but it must be proved, L. R. 14 I. A. 71.

P. 898, note 3, *add* 10 All. 174.

P. 915, sec. 115, As to equitable estoppel, see 9 All. 413.

P. 916, note 1, *add* The purchaser at an execution-sale is not, as such, a 'representative' of the judgment-debtor.

P. 919, sec. 125, l. 1. In Burma 'Police-officer' here includes Commandants and seconds in command of the military police, Act XV of 1887, sec. 3.

P. 927, note 1, l. 2, *after* '24' *insert* and see 28 & 29 Vict. c. 18, sec. 5.

P. 961, sec. 7. These provisions extend to applications under secs. 365, 366, 368 and 371 of the Code of Civil Procedure; see Act VII of 1888, sec. 32.

P. 966, sec. 13, see 14 Cal. 457.
P. 967, sec. 15, l. 2, 'suit,' not application, 11 Mad. 103.
P. 970, note 2, *add* There is no saving of oral acknowledgments received or given before the Act came into force, 12 Bom. 268.
P. 986, art. 80, see 11 Mad. 153.
P. 1016, note 4, see 11 Bom. 591.
P. 1041, art. 17, cl. vi, see 11 Mad. 148, 149 note.
P. 1075, ll. 3-5, see 9 All. 210.
P. 1096, note 7, *add* and see 10 Mad. 64.

CORRIGENDA.

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P. ix, last two lines, *for* take an interest in the efforts of English statesmen *read* sympathise with English statesmen in their efforts
P. xiv, l. 3, for Codes *read* measures
P. xxiv, l. 1, *for* use *read* employ
P. xxvii, l. 5, *for* Mahmud *read* Mahmúd.
l. 25, *for* pleasure in picking *read* desire to pick
P. 7, col. 2, ll. 16, 27, for Acts VIII of 1876, XVII of 1883 *read* X of 1887
l. 19, *for* VIII of 1881 *read* XII of 1886, secs. 15-19
P. 8, col. 1, ll. 11 and 12, *read* Excise (Mad. Act I of 1886)
l. 23, *for* III of 1886 *read* IV of 1887
col. 2, l. 26, *for* Reg. V of 1872 *read* Regs. V of 1872 and II of 1884
P. 91, col 1, l. 22, *for* Reg. I of 1873, *read* Reg. IV of 1887
P. 97, note, col. 1, l. 1, *for* Mad. Act I of 1874, *read* Mad. Acts I of 1884, sec. 56, and IV of 1884, sec. 41
P. 255, marg. note to sec. 422, *for* creditor's *read* creditor
P. 258, note 5, *for* 431 *read* 426
P. 322, ll. 15, 16, *omit* probate or
P. 460, note 1, l. 10, for XIX of 1868, secs. 47, 49 *read* XXII of 1886, chap. VII
P. 495, l. 13, *for* agent *read* principal
P. 513, l. 29, *for* desired *read* decreed
P. 515, note 3, l. 2, *for* Couch *read* Westropp
P. 516, note 3, *for* Brown *read* Broun
P. 532, last line, *after* dealt *insert* with
P. 546, note 2, *dele the last four lines.*
P. 604, note 1, *for* 209 *read* 106
P. 659, last line, *for* XXI *read* XXVI
P. 685, note 4, *before* Sc. *insert* 2
P. 736, l. 6, *dele* the mass of
P. 881, l. 32 *should be* illustration (*b*) to section 18 shows that the negative easement to restrain
ll. 33-34, *dele* 'and is a negative easement'

P. 883, ll. 24-26, *dele* Section . . . towns [2], *and dele* note 2
P. 934, l. 36, *for* us *read* no
P. 939, l. 26, *before* what *insert* some of
P. 955, notes, col. 2, l. 3, for *Balmarino* read *Balmanno*
P. 1002, col. 1, 'Crops' l. 1, *for* 744 *read* 774

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P. 29, ll. 20, 21, *omit* and never has been
P. 33, l. 12, *for* practices *read* practic
P. 64, l. 5, *read* Britain
P. 104, l. 2, in margin, *for* or *read* for
P. 108, note 1, l. 1, *read* deepening
P. 138, first marginal note, *read* attendance
P. 154, notes, col. 2, l. 3, *read* Of
P. 173, l. 13, *read* convicted
P. 186, l. 3, *for* [3] *read* [1] *and in* l. 17 *dele* [1]
P. 429, l. 1, *read* litigation
P. 511, note 5, l. 3, *after* behalf *insert* of
P. 544, sec. 214, l. 6, *for* cost *read* costs
P. 564, notes, col. 2, l. 5, *read* the
P. 580, note 1, l. 3, *after* see *insert* 2
P. 587, note 1, l. 8, *read* mortgagees
P. 622, note 4, l. 1, *read* procedure
P. 625, note 5, l. 7, *read* 1 I. A. Note 7, l. 1, *read* report
P. 656, note 4, l. 1, *for* things like *read* such things as
P. 682, in marginal note to sec. 567, *after* Finding *insert* and
P. 820, fourth line from bottom, *for* are not, or *read* or not, are
P. 848, *opposite* '105,' *read* within
P. 849, notes, col. 2, l. 9, *dele* probably
P. 861, note 7, l. 3, *read kuldchár*
P. 988, art. 97, l. 3, *for* falls *read* fails

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